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91-579

Supreme Court, U.S.
FILED
JUN 26 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

MIN-CHUAN KU, PETITIONER

VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PETITIONER, MIN-CHUAN KU, RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI BE ISSUED TO REVIEW THE JUDGMENT AND OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT IN THIS PROCEEDING ON JANUARY 31, 1991.

NAME: MIN-CHUAN KU
PETITIONER PRO SE
ADDRESS: 340 LOCH STONE COURT
FAYETTEVILLE, N.C. 28303
PHONE NUMBER: 1-919-867-3355

To: The Clerk
The Supreme Court of the United States
Washington, D.C. 20543

From: Min-chuan Ku, 340 Loch Stone Court, Fayetteville, N.C. 28303
Petitioner, in the case of Min-chuan Ku v. Commissioner of Internal Revenue

Subject: Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Date: October 1, 1991

Dear Sir:

Enclosed please find forty (40) copies of my petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, together with Appendixes attached thereto. May I hop that you file them with the Supreme Court at your earliest convenience?

The corrections made in my original petition, which was submitted on June 26, 1991, were in strict observance of the instructions made by your staff members, Mrs. Loretta Ruffin, Mr. Francis J. Lorson, and Ms. Suzy McDivitt. Although I prefer to attach copies from the original governmental documents or copies of the correspondence from, or agreements (e.g. the stipulation of facts) with, governmental officers to show the genuineness and vividness of the documents or correspondence as I did in my first petition, dated June 26, 1991, so as also to avoid some unavoidable typographical errors, yet in following their instructions, all the appendixes were retyped and copies made from them in meeting the requirements in the Rules of the Supreme Court.

In addition, in order to present a whole picture of my positions at different stages in a serial manner in this case in one document, and in view of the fact that when I appealed my case to the United States Court of Appeals for the Fourth Circuit, I assume and believe that all the important documents in this case would be submitted by the Tax Court to the Court of Appeals for its review, but later I have found from a list of documents (sent to me by the Tax Court) submitted by the Tax Court to the Court of Appeals, but my brief, dated April 2, 1990, submitted by me to the Tax Court at the trial on April 4, 1990, which, I believe, was the most concise, clear, and effective presentation I made to the Tax Court, was not there, and it was not transmitted to the Court of Appeals by the Tax Court until I made a special inquiry of the Tax Court about it, which was reflected in Part I, "The Preface - The

handling of my case by the Tax Court," in my supplementary informal brief dated October 19, 1990. In order to avoid that same thing which might happen to the transmission of documents from the Court of Appeals for the Fourth Circuit to the Supreme Court, appended are six additional Appendixes numbered E-5, E-6, E-7, E-8, E-9 and E-10, all of them pertaining to Part E, "Statement of the Case," in this petition but omitted the appendixes thereto. If the Justices need to check the appendixes to these appendixes, they may check the appendixes to the same documents (E5 - E-10) normally submitted by the Court of Appeals to the Supreme Court, and in some of these appendixes with a few changes in words or short expressions to eliminate some typographical errors.

The adding of these appendixes is with the specific permission of Ms. Suzy McDivitt, Assistant Clerk in the Office of the Clerk, who was the latest to examine my petition and gave me corrections to make it conform to the rules of the Supreme Court.

Sincerely,

Min-chuan Ku
Petitioner pro se

Enclosed: Forty copies of my petition with Appendixes as listed in the Part of Appendixes attached to this petition.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No._____

MIN-CHUAN KU, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PROOF OF SERVICE

I, Min-chuan Ku, do declare that on this date, October 1, 1991, have served three copies of the Petition for a writ of Certiorari to the United States Court of Appeals for the Fourth Circuit on Mr. Kenneth W. Starr, Solicitor General, by depositing an envelope containing the above documents in the United States mail properly addressed to him as addressed below and with first-class mail postage prepaid.

Kenneth W. Starr, Esquire
Solicitor General
U.S. Department of Justice
Washington, D.C.

Min-chuan Ku

To: Kenneth W. Starr, Esquire
Solicitor General
U.S. Department of Justice
Washington, D.C.

From: Min-chuan Ku, 340 Lock Stone Court, Fayetteville, NC 28303

Subject: Sending you three copies of a petition, which I am submitting to the Supreme Court of the United States.

Date: October 1, 1991

Dear Mr. Solicitor General:

Enclosed please find three (3) copies of my petition, dated October 1, 1991, together with a copy of my letter, to the Clerk of the Supreme Court and another copy of the Proof of Service, all dated October 1, 1991, and all of which I am submitting to the Supreme Court through the Clerk of the Court in the case of Min-chuan Ku v. Commissioner of Internal Revenue.

Sincerely,

Min-chuan Ku

Enclosures: As stated in the letter

I. Questions presented for review pp. 1-6

1. Whether the paragraph under the subheading, "Certain Property placed in service or leased after June 18, 1984--," in Chapter 26, "Depreciation" in the IRS Publication #17, Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Returns, and also for use in preparing other years' returns (this paragraph also had appeared in another important IRS Publication #534, Depreciation for use in preparing the (yearly) income tax returns (from 1984 through 1989) when my research ended, revisions after revisions, and year after year, the whole paragraph says:

> "Certain property placed in service or leased after June 18, 1984--" There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not predominantly (more than 50%) in a qualified business use during any tax year.... (emphasis added)

or whether this paragraph is a rule or regulation for taxpayers to follow? When I cited this paragraph to support my claims for the depreciation deduction of my professional library and also the deductions of the utilities used therein at the trial on April 4, 1990, in the Tax Court, presided over by Judge Carleton D. Powell, the Special

Trial Judge, who waved a book (later found to be The Internal Revenue Code of 1986 as amended) and said to me:

> This is not--Mr. Ku. Whatever the publications say are not the laws. This [he referred to the book he waved which later I found to be The Internal Revenue Code of 1986 (as amended)] is the law. This is what I am bound by.[1]

I believe by this quotation Judge Powell meant that the law, in a broader sense, includes rules and regulations, and that all the publications, whether they are made by the Commissioner of Internal Revenue or by the Secretary of the Treasury are not the laws and without any legal validity or legal force because they are not made by the Congress, or they are not in the Internal Revenue Code of 1986. I believe this is the core of the reasoning in his decision, entered on May 9, 1990; and the United States Court of Appeals for the Fourth Circuit affirmed Judge Powell's decision on the reasoning of the Tax Court, Min-chuan Ku, v. Commissioner, Tax Ct. No. 25028-89 (May 9,

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[1] This is taken from page 18 in the official written transcript done by On the Record Reporting, Inc, and certified by the two transcribers that the contents in this transcription from page 1 through 39, inclusive are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Anita K. Benson, an officer and staff member of the Tax Court on April 4, 1990. A copy of this remark by the Judge is attached as Appendix F-1 below.

1990), per curiam, despite my lament to the Court of Appeals in my informal brief, dated August 23, 1990; that the credibility, dependability, and reliability of the IRS publications would be at stake if the "restricting paragraph" or the paragraph, under the subheading, "Certain property placed in service or leased after June 18, 1984--," quoted before is not the law and without any legal validity or legal force. Therefore, it is respectfully requested that this question (whether all the IRS Publications are not the laws and without any legal validity or legal force) be reviewed by the Supreme Court as early as possible.

2. Whether the regulation by the Internal Revenue Service to set up the business travel meals expenses at $14.00 for three or four meals (breakfast, lunch, snack, and dinner) per day for both out-of-state and in-state travels for only a few days in each trip and a few trips in each year in this time and age is not too harsh, unrealistic, unreasonable, and therefore, unconstitutional; and whether a professor is required by law to sit at the counter of a fast food store or restaurant to gnaw or bite a hamburger or a hot dog for every meal in a day in his or her business travels, even when he or she has to spend his or her own money. I requested the Trial Judge at the Tax Court to declare this regulation to set up $14.00 for both out-of-state and in-state business travel expenses per day to be unconstitutional without success, and I

believe that the Court of Appeals for the Fourth Circuit did not take this and other points in my repeated appeals to it seriously into consideration for review. Therefore, it is respectfully requested that this regulation be reviewed and declared unconstitutional by the Supreme Court.

3. Whether a judge in a federal court could try to avoid declaring my specific request that the above-mentioned regulation made by the Internal Revenue Service to set up $14.00 for three or four meals per day within 30 days for business travel meals to be unconstitutional, but mistook this, my request, as to ask the judge to declare that Section 274 (d) in The Internal Revenue Code of 1986 (as amended) to be unconstitutional, and, thereby, ignored it. In other words, could he evade the question first, and ignore it later?

4. Whether a Government decision could be made closing the loop holes in the Internal Revenue laws (which I would assume so, but vigorously disagree with) because the rule or regulation (or the "restricting paragraph") I rely on for depreciation deductions is the law derived from Section 301.7805-1 (a) Issuance in the Regulations on Procedure and Administration promulgated by the Secretary of the Treasury, this Section is in turn derived from Section 7805 (a) Authorization, which is the Section in the Internal Revenue Code of 1986 (as amended). All of these were stated very comprehensively

and clearly in my supplementary informal brief, dated October 19, 1990, and also in my petition for a rehearing of this case to the Court of Appeals for the Fourth Circuit dated February 11, 1991, and briefly discussed under "Reasons for granting a writ" and also "Conclusions" below, and all of these were derived from an important element in constitutional law, namely: the delegation of powers by the legislative branch to the executive and administrative officers of authority in the Executive branch to make rules and regulations to govern the affairs in their respective fields, discussed under the part, "Reasons for granting a writ (or the legal bases on which I made the claims to IRS") below. Should there be one or a few loop holes, there are better ways to close it or them, but not to close it or them at any price, much worse at the sacrifice of the principle of the "rule of law," the cardinal principle of democracy in a democracy. Moreover, in the judgment of the Court of Appeals for the Fourth Circuit, there is a large stamp mark, "Unpublished" on the first page and a footnote at the bottom on that page, saying, "Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.," which led me to wonder: am I the only one and is my case the only case to have received the decision from the Tax Court and the Judgment from the Court of Appeals? If so, what about the principle of "the equal protection of the laws"

enshrined in the Fourteenth Amendment to the federal Constitution? Therefore, it is respectfully requested that these two questions, stated under this point, "4," above, be reviewed by the Supreme Court.

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E-1 A copy of a post card, dated 06-21-85, from IRS saying that the matter is cleared up, and I need not take any further action.....Appendix 17

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A. Table of legal authorities cited and discussed in this case

1. Internal Revenue Code, as of June 5, 1986, Volumes I and II, Chicago, Ill., Commerce Clearing House, Inc.
2. Excerpt from The Regulations on Procedure and Administration, sent to me by Ms. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, in reply to my inquiry of the Commissioner of Internal Revenue, dated July 23, 1990.
3. Sec. 706 of The Administrative Procedure Act, United States Code Service, Lawyers Edition, 5 USCS, Government Organization and Employees, Sections 554-900, Rochester, New York, 1989.
4. Internal Revenue Service Publication 17 (Rev. Nov. 84), Your Federal Income Tax, For Individuals, for use in preparing 1984 Returns
5. Internal Revenue Service Publication 17 (Rev. Nov. 85) Your Federal Income Tax, For Individuals, for use in preparing 1985 Returns
6. Internal Revenue Service Publication 534 (Rev. Dec. 84), Depreciation, for use in preparing 1984 Returns
7. IRS Publication, Depreciation for use in preparing 1985 Returns
8. IRS Publication, Depreciation for use in preparing 1986 Returns

9. IRS Publication, Depreciation for use in preparing 1987 Returns

10. IRS Publication, Depreciation for use in preparing 1988 Returns (with a change of one word)

11. IRS Publication, Depreciation for use in preparing 1989 Returns (with a change of one word)

12. Sec. 1.162-6 in the IRS Income Tax Regulation

13. IRS Rev. Proc. 83-71 at .421 gave effect to IRS rule or regulation to set standard daily meal allowance at $14.00 for travel requiring a stay of less than 30 days in one general locality where a taxpayer is pursuing a trade of business, and $9.00 for a stay of at least 30 days.

14. Standard Federal Tax Reporter (without specification, given to me by the Auditing Office of IRS office in Fayetteville) to record the above IRS regulation under item No. 13.

15. The Freedom of Information Act of July 4, 1963, as amended on November 21, 1974.

16. The Fifth and Fourteenth Amendment to The Constitution of the United States.

17. The Constitution of the United States of America–Analysis and Interpretation–(Annotation of cases decided by the Supreme Court of the United States to June 22, 1964) prepared by the Legislative Reference Service, Library of Congress, 1964

Edition, published by the U.S. Printing Office, Washington, 1964.

18. Prentice Hall: Federal Tax Guide, 1989, First Edition, Vol. I.

19. Black Law's Dictionary, Fifth Edition, 1979, St. Paul, Minn.: West Publishing Company.

20. The Case Laws

    a. Major case laws cited in Prentice Hall/Federal Tax Guide, 1989, First Edition, Vol. I, in Sections 15332, 15335 on pages 15019 and 15021 respectively:

        (1) Property is depreciable during intermittent periods when idle but ready for use. P Dougherty Co. v. Comm., 159 F2d 269, 35 AFTR 669 cert den.

        (2) Depreciation allowed on property held for income though no income was produced. Rev. Rule 55-579, 1955-2 CB 47

        (3) Allowance based on estimate. Cohen v. Cohen. 39F2d 540, 8 F AFTR 10552

    b. Cases in which the Supreme Court of the United States had approved the delegation of power to the Internal Revenue Service - in Re Kollock, 165 U.S. 526 (1897)

c. Cases in which the Supreme Court of the U.S. had approved the delegation of power to the Secretary of the Treasury - in Buttfield v. Stranahan, 192 U.S. 470 (1904)

d. Cases in which the Supreme Court of the United States had approved the delegation of power to executive or administrative official of authority to make rules governing the affairs in their specific fields:

(1) United States v. Grimaud, 220 U.S. 506 (1911);

(2) U.S. v. Shreveport Grain & El. Co., 287 U.S. 77, (1932);

(3) Currin v. Wallace, 306 U.S. 1 (1939);

(4) Avent v. United States, 266 U.S. 127 (1924);

(5) U.S. v. Rock Royal Co-op., 307 U.S. 533 (1939);

(6) Yakus v. United States, 321 U.S. 414 (1944);

(7) Bowles v. Willingham, 321 U.S. 503 (1944);

(8) Sunshine Coal Co. v. Adkins, 310 U.S. 381, 397 (1940);

(9) Hirabayashi v. United States, 320 U.S. 81, 104 (1943);

(10) Fahey v. Mallonee, 332 U.S. 245 (1947);

(11) Mulford v. Smith, 307 U.S. 38 (1939);

(12) Int. Com. Comm. v. Goodrich Transit Co., 224 U.S. 194, 214 (1912);

e. Cases in which the state laws declared to be unconstitutional by the Supreme Court of the United States because of their unreasonableness, such as:

(1) Smith v. Ames, 169 US 466 (1895);

(2) Chi B. & Q. Ry v. Wisconsin R.R. Com., 237 US 220 (1915);

(3) Southwestern Tel. Co. v. Danuber, 238 US 482 (1915);

(4) Burns Baking Co. v. Bryan, 264 US 504 (1924).

(5) Michigan Commission v. Duke, 266 US 570 (1925).

(6) Weaver v. Palmer Bros. Co., 270 US 402 (1926).

(7) Manley v. Georgia, 279 US 1 (1929).

(8) Western & Atl. R. Co. v. Henderson, 279 US 639 (1929)

(9) Bibb v. Navajo Freight Lines, 359 US 520 (1959).

(f) Cases in which the municipal ordinances declared to be unconstitutional by the United States Supreme Court because of their unreasonableness, such as:

(1) Postal Telegraph-Cable Co. v. Taylor, 192, US 64 (1904).

(2) South Covington Ry. v. Covington, 235 US 537 (1915).

B. Opinions below (the texts are appended in the Appendixes and listed separately with their texts)

1. A copy of the text of the Judgment and Opinion from the United States Court of Appeals for the Fourth Circuit, dated January 31, 1991, ia appended in Appendixes as Appendix B-1 Appendix 2-3

2. A copy of the text of the Order of Denial to my Petition for a rehearing on this case by the United States Court of Appeals for the Fourth Circuit is appended in the Appendixes as Appendix B-2 Appendix 5

3. A copy of the text of the Decision and Opinion from the United States Tax Court, entered May 9, 1990, is appended in the Appendixes as Appendix B-3, with the captions as follows Appendix 6

   a. A copy of the Decision, entered May 9, 1990 Appendix 6

   b. A copy of the notice of service of transcript from the Clerk of the Court, served May 9, 1990 Appendix 7

c. A copy of the Bench opinion by Judge Carleton D. Powell, dated April 4, 1990

Appendix 7

d. A copy of a special part excerpted from the official transcript by On the Record Reporting on page 18, which is relevant to this case, and quoted below but which is different from the transcript sent to me by the Clerk of the Tax Court Appendix 11

C. Jurisdiction statement

The Judgment of the United States Court of Appeals for the Fourth Circuit in this case was filed on January 31, 1991. A timely petition for rehearing of this case was filed on February 11, 1991. The Court of Appeals' Denial of the petition for rehearing was issued on February 26, 1991. An application for the extension (or enlargement) of the time for filing the petition of a writ of certiorari was submitted to the Chief Justice on May 11, 1991, who issued an order to extend the time to and including June 26, 1991; a second application was submitted to Justice Thurgood Marshall for another extension for 30 more days on June 14, 1991, but was denied by the Chief Justice on June 19, 1991. The petition for certiorari was submitted to the Court through the Clerk of the Court on June 26, 1991. The jurisdiction of the Supreme Court is invoked under Section 7482 of the Internal Revenue Code of 1986 (26, U.S.C.) and also title 28, U.S.C. Section 1254 (1).

D. Constitutional and statutory provisions, and regulations made by the Commissioner of Internal Revenue and the Secretary of the Treasury (the titles and the texts of which are listed separately below:

1. The Constitutional provisions

a. Amendment 5 to the Federal Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation. (emphasis added)

(This is related to the fact that IRS imposed a penalty and interest on my 1983 income tax return without telling me as to why the penalty and interest had imposed and how they had reached the figures.

b. Amendment 14 to the Federal Constitution provides:

> *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added)

This is related to the footnote in the Judgment dated January 31, 1991 of the United States Court of Appeals for the Fourth Circuit that the "unpublished opinions are not binding precedent in this Circuit." discussed under "Questions presented for review" before.

2. Statutory provisions

a. Section 280A(c) (5) is made from Internal Revenue Code as of June 5, 1986, Volume 1, Income Tax §§1-1564, Commerce Clearing House, Inc., p. 4224.

> (5) LIMITATION OF DEDUCTIONS–In the case of a use described in paragraph (1), (2), or (4) and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of–
>
> (A) the gross income derived from such use for the taxable year, over
>
> (B) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

From the above quoted clause, (5) Limitations of Deduction and Subclause (A) and (B), IRS disallowed my claims for the depreciation-deduction on my professional library and the utilities used therein in my income tax returns of 1985 and 1986, but I strongly believe that the application of Section 280A(c) (5) is restricted by the "restricting paragraph," quoted below, and the reasons for which are stated and expounded in Part F, "Reasons for granting a writ," and directly and concisely summarized in Part G, "Conclusion," both of which are stated below.

b. Section 7805 (a) in the Internal Revenue Code of 1986 (as amended), provides:

> [Sec. 7805]
> SEC. 7805. RULES AND REGULATIONS
>
> [Sec. 7805(a)]
> (a) Authorization–Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (emphasis added)

c. Section 706 of The Administrative Procedure Act is made from United States Code Annotated, Title 5, Government

Organization and Employees, Section 704-5100, St. Paul: West Publishing Co., P. 54, which is attached as F-6.

§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall–

(1) ...

(2) hold unlawful and set aside agency action, findings, and conclusions found to be–

(A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

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4. Regulation made by the Secretary of the Treasury in Section 301.7805-1 in the Regulations on Procedure and Administration, p. 462

.....

301.7805-1 Rules and regulations.

(a) Issuance. The Commissioner with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this

> authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue (emphasis added).

5. Regulation made by the Commissioner of Internal Revenue in the "restricting paragraph" in the IRS Publication #17, entitled, Your Federal Income Tax for Individuals for Use in Preparing 1984 Returns, p. 116. This paragraph also appeared in the same IRS publication for use in preparing returns for other years, and it had also appeared in another very important IRS publication, entitled Depreciation (from 1984 through 1989, when my research ended). The publication, Depreciation has been revised time and again and year after year, but this paragraph remained the same through all these years (1984 through 1989), which, I believe, constitutes a firm and an established policy of the government.

The "restricting paragraph" (which I would call, and I believe it is to restrict the application of Section 280A(c) (5) of the Internal Revenue Code of 1986 (as amended) as expounded in this petition) is quoted below:

> CERTAIN PROPERTY PLACED IN SERVICE OR LEASED AFTER JUNE 18, 1984--- There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June

18. 1984. These limits apply if the property is not predominantly (more than 50%) in a qualified business use during any tax year... (emphasis added)

E. Statement of the case

I recall having asked a female staff member at IRS in Fayetteville, N.C., to help prepare my income tax returns since 1966 or 1967 after I moved to North Carolina and taught at Pembroke State University in 1965. She seemed to be competent and experienced and knew what a taxpayer's income tax returns should be, and what IRS expected it to be, and I learned everything from her, year after year, and there were no inquiries, interruptions, or disallowances of my claims from IRS in my income tax returns during those years, but later after a federal budget cut, she left IRS and transferred to another job. Then according to the press report there was a mass resignation of the staff from IRS, resulting in the loss by IRS of so many old pros, who knew not only what they were doing and the conspicuous rules and regulations, such as Section 280A(c) (5) in the Internal Revenue Code of 1986, but also the obscure exemptions or restrictions, such as the paragraph under the subheading "Certain Property placed in service or leased after June 18, 1984--" which I would call the "restricting paragraph" to restrict the application of Section 280A(c) (5), not to my professional library, discussed further under the topic, "Reasons for granting a writ" later. But when the newcomers came in, it would seem that small ripples developed, between IRS and me beginning in

1982, when I received a notice dated 05-01-88, from Ms. Betty F. Hatcher, Chief, Correspondence Section, saying that:

> 1. We need a copy of your W-2p, pension income that states what is taxable.
>
> 2. I have attached copies of your interest and the one marked in yellow is the one you did not report.

and the one marked in yellow was an interest of $233.00 from my Series E, Savings Bonds. Then I wrote back to her on May 16, 1985, saying:

> ...However, I believe I have reported this as the fifth of my six interest incomes under Part I, item 2, in Schedule B (as it should be there), which has been attached to my 1982 income tax return, and I have mentioned these six sources of interest income twice in my letter of January 23, 1985, to your Service Center. May I ask you to check and see under Part I, item 2, in Schedule B, attached to my 1982 income tax return, if I have reported the interest of $233.00 from Series E Savings Bonds. After rechecking and researching that schedule, if you still have any doubt or any problem, will you please send me photo copies of both the front and the back sides of my income tax return and also a copy of schedule B and let me check and see what went wrong?
>
> .....
>
> .....

Then I received a reply, dated 06-21-85, on a casual postcard from the Chief, Information Return Branch of IRS, with the name and signature unclear (a copy of both the front and the back of this postcard is attached as Appendix E-1)

Then in 1983, a serious matter had happened. All of a sudden in a notice, dated 07-26-85, IRS said to me, regarding my 1983 income tax return:

Balance of prior assessment	$160.54
Late payment penalty	$0.00
Interest	$3.79
Total Amount Due	$164.33

Then I wrote IRS on July 31, 1985, that I did not receive their previous notice to give me the prior assessment of $160.54 and asked them to send me a copy of it and received a reply, dated August 27, 1985, from them saying, inter alia,

> We are unable to send you a photo copy of previous notice sent. We do not keep a file of the notices.

Then I seriously made a request to them based my request for information, on the Freedom of Information Act of July 4, 1963, as amended on November 21, 1974, and also on the due Process Clause in the Fifth Amendment to the Federal Constitution. Then I received a

notice, dated October 3, 1985, from Ms. Catherine B. Harmon, Chief, Correspondence Section, the third paragraph of which states:

> A summary of your 1983 account is enclosed, showing the credits, payments, and assessments made. When an income tax return is more than 60 days late, a minimum penalty is added of not less than $100.00 or 100% of tax due on the return. You were assessed $100.00. Interest is compounded and will continue to accrue until the full amount is paid.

(a copy of this notice with the enclosed "Record of Accounts" is attached as Appendix E-2). From the Record of Accounts, I found that IRS assessed $100.00 as my late filing penalty, or I filed my 1983 income tax return 60 days later than the date I should have filed, which was absolutely untrue and without any factual basis. After I had a lengthy correspondence with the IRS to prove to them that I was not 60 days late in filing my 1983 income tax return. But I was urged by them to pay the interest owed, and I paid $50.68 to cover the interest of $42.47 and accrued interest of $8.21 as stated in their "Record of Accounts" listed as Appendix E-2 with a remark to the effect that "this payment was paid subject to confirmation."

After a lengthy correspondence with IRS to get the facts straightened out, IRS reduced or deleted my penalty and interest bit by bit, and time and again, from the amount of $164.33 almost to nothing.

Enclosed please find a notice, dated November 17, 1987, from IRS (a copy is attached as Appendix E-3) to prove this point.

And in 1984, I moved from Pembroke (where I taught at Pembroke State University from 1965 to 1978 (and retired at the age of 65 in 1978) to Fayetteville, N.C., as my permanent residence. I recall in that year's income tax return, I claimed the deduction for the rent, when I was in Pembroke (January to April, 1984) and the depreciation deduction of my professional library after I moved to Fayetteville (May to December, 1984) and also the claim for the business travel meals expenses for $25.00 per day for out-of-state travels and $17.50 for in-state travels. I received a notice, dated June 1, 1987, from IRS (copy of which is attached as Appendix E-4):

> We received your amended return for the tax year indicated above.
>
> ___ We will review your return as soon as possible. Since we have a large number of similar requests, it may take as long as 3 months before yours is processed. We apologize for any inconvenience this may cause you.
>
> You will receive a notice from us regarding this tax when the change has been completed.

But, I do not recall any change or disallowance, which was made by the IRS. In this connection, I believe it is human nature that

one does not like to be challenged or corrected by others, and in my tax cases there were gross mistakes made by IRS in two years' income tax returns (i.e., 1982, and 1983, stated before) which later were corrected or straightened out by me. I do not know if these would cause any resentment by IRS or would have resulted in my present disputes about my 1985 and 1986 income tax returns, which are now before the Supreme Court.

In addition, in order to present a whole picture of this case in a serial manner without fearing that any document, which might be missing from the transmitting of documents or papers from the United States Court of Appeals to the Supreme Court as it did happen from the submitting of the documents from the United States Tax Court to the United States Court of Appeals for the Fourth Circuit, in which my brief, dated April 2, 1990, which I believe, was the most concise, clear, and effective presentation., I had made to the Tax Court, but was missing or was not submitted to the U.S. Court of Appeals by the Tax Court until I made a special inquiry of the Tax Court. All of these were reflected in Part I, "The Preface – The Handling of This Case by The United States Tax Court" in my supplementary informal brief, dated October 19, 1990.

Therefore, appended herewith are six appendixes as listed below:

E-5 A copy of my petition, dated October 10, 1989, to the United States Tax Court, requesting the Court to vacate the decision of the Internal Revenue Service in its Notice of Deficiency, dated July 21, 1989.

E-6 A copy of my brief (omitting all the Exhibits), dated April 2, 1990, to the United States Tax Court also requesting the Court to vacate the decision of the Internal Revenue Service in its Notice of Deficiency dated July 21, 1989.

E-7 A copy of my informal brief (omitting all the appendixes), dated August 23, 1990, to the United States Court of Appeals for the Fourth Circuit, requesting the Court to vacate the Decision, entered May 9, 1990, by the United States Tax Court.

E-8 A copy of the Commissioner's (or the Appellee's) Informal Brief (omitting all the appendices) dated September 14, 1990 (or a reply to my informal brief).

E-9 A copy of my supplementary informal brief (omitting all the appendixes), dated October 19, 1990 (as a reply to, and comment on, the Commissioner's informal brief) also requesting the Court of Appeals to vacate the

Decision of the United States Tax Court, entered May 9, 1990.

E-10 A copy of my petition (omitting all the appendixes), dated February 11, 1991, to the United States Court of Appeals for the Fourth Circuit for a rehearing of this case.

The appendixes to each of the above are omitted in this petition in the hope that if the Honorable Justices need to check them, they may check the same documents in this petition (E-5 to E-10) normally submitted to the Supreme Court by the United States Court of Appeals; but a few changes of words or short expressions have been made to eliminate a few typographical errors.

And the judgment and opinion of the United States Court of Appeals for the Fourth Circuit and also of the United States Tax Court to the above mentioned petition and brief are quoted under "Opinions below," before in this petition.

F. Reasons for granting a writ.

I. The legal basis on which I made the claims to IRS.

(A) The basis in substantive laws:

1. The Internal Revenue Service cited Section 280A (c) (5) in the Internal Revenue Code of 1986 (as amended), (a copy of which is attached as Appendix D-3, a.) to disallow my claims for the depreciation-deductions of my professional library and the deductions of the utilities used therein in my income tax returns of 1985 and 1986.

Sec. 280A (c) (5) says:

> "(5) Limitation on Deductions-- in the case of use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of:
>
> (A) the gross income derived from such use for the taxable year, over
>
> (B) the deductions allowable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

And at the peak of the trial on April 4, 1990, at the Tax Court, Judge Carleton D. Powell, Special Trial Judge, waved a book and said to me:

> That is not..., Mr. Ku, Whatever the publications say are not the law. This is the law (later I found out that book was "Internal Revenue Code of 1986 (as amended)). This is what I am bound by.[1]

(This is taken from the official transcription of the trial, on page 18, transcribed by On the Record Reporting, Inc., which I was given to understand was contracted by the Tax Court to do the transcription). (A copy of this is attached as Appendix F-1), which, I believe, was the center of the reasoning in his Decision, entered on May 9, 1990, in this case, and on which the judgment of the United States Court of Appeals for the Fourth Circuit relied (in a part of the Judgment of the United States Court of Appeals, the Court said, "Accordingly, we affirm on the reasoning of the Tax Court." Min-chuan Ku v. Commissioner, Tax Ct. No. 25028-89 (May 9, 1990)). However, the above quotation made by Judge Powell was, I believe, in discord with the provisions in the very book (The Internal Revenue Code of 1986 (as amended) which the Judge professed to be bound by, namely: Section 7805(a) and Section 301.7805-1(a) which will be expounded later, on pp. 41-42 in this petition. But I base my claims for the deductions for those two years (1985 and 1986), the years income tax returns are in question, on

---

[1] Please see footnote 1 on page 2.

the following bases, namely: I. The Regulation by the Commissioners of the Internal Revenue; II. The regulation by the Secretary of the Treasury; III. The provisions in The Internal Revenue Code of 1986 (as amended), and IV. The important element in constitutional law, namely: the delegation of powers by the Congress to the executive and administrative officers of authority in the Executive branch to make rules to govern the affairs in their respective fields both in theory and in practice in the past; and I will very briefly explain them below.

(I.) The regulation made by the Commissioner of Internal Revenue. According to a paragraph under the subheading, "CERTAIN PROPERTY PLACED IN SERVICE OR LEASED AFTER JUNE 18, 1984---" quoted and discussed below:

> "CERTAIN PROPERTY PLACED IN SERVICE OR LEASED AFTER JUNE 18, 1984--- There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. This limits apply if the property is not predominantly (more than 50%) in a qualified business use during any tax year... (emphasis added)

(The above quotation is taken from Chapter 26, Depreciation, in the Internal Revenue Service Publication #17 (Rev. Nov. 84), Your Federal Income Tax, For Individuals, For use in preparing 1984

Returns, on page 116, the same paragraph appeared in the same Internal Revenue Service Publication for 1985, and I assume it appeared on the same Internal Revenue Service Publication for other years, too; and it also appeared in another important Internal Revenue Service Publication, #534, Depreciation, from 1984 through 1989, when my research ended).

From the above quoted paragraph, "There are limits on the depreciation (or rent) deductions you may claim...." I believe the "limits" mentioned above refer to, or at least include "limitation of deductions" quoted in Section 280A (c) (5), and I also believe that "certain other property placed in service or leased after June 18, 1984" quoted in the latter part of the paragraph quoted above refers to, or at least includes, my property or "professional library," mentioned above. Therefore, from this I would infer that this paragraph is made to restrict the application of Section 280A (c) (5) in The Internal Revenue Code of 1986 (as amended); not to my property or professional library; or Section 280A (c) (5) should not apply to my professional library in my income tax returns of 1985 and 1986, in two ways, namely: (1) I placed my professional library in service beginning on May 1, 1984, and not after June 18, 1984; and (2) my professional library is used predominantly (50%) for a qualified business use, and not not used for a qualified business use.

(II.) The regulations made by the Secretary of the Treasury.

These were detailed in my supplementary informal brief, dated October 19, 1990, and summarized in my petition for a rehearing of this case, dated February 11, 1991, both of which were sent to the United States Court of Appeals for the Fourth Circuit, and they are very briefly excerpted here.

Section 301.7805-1 in the Regulations on Procedure and Administration which were sent to me by Ms. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, which, I was told by her office, was promulgated by the Secretary of the Treasury and which says:

> Sec. 301.7805-1 Rules and Regulations
>
> > (a) Issuance. The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue (emphasis added).

(III.) The Section or provisions from The Internal Revenue Code of 1986 (as amended). As stated before, this has been

detailed and expounded in my supplementary informal brief, dated October 17, 1990, and summarized in my petition for a rehearsing of this case, dated February 11, 1991, to the Court of Appeals, but only very briefly discussed here.

> Section 7805 Rules and Regulations and (a) Authorization in the Sec. 7805 (a) in the Code says:
>
> (a) Authorization - Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of alteration of law in relation to internal revenue (emphasis added) (a copy of which is attached in Appendix D-3.b.).

(IV) The important element in constitutional law, namely the delegation of power by the legislative branch to the executive and administrative officers of authority in the executive branch to make rules and regulations to govern the affairs in their respective fields. This may be said in theory and in practice as follows:

1. The theory of the "delegation of powers" in "Constitutional Law." To trace this point in theory and practice in "Constitutional Law," I have found under the heading "Functions

which may be delegated" and the subheading, "Power to supplement statutory provisions," in a book, The Constitution of the United States of America - Analysis and Interpretation – (Annotation of cases decided by the Supreme Court of the United States to June 22, 1964) prepared by the Legislative Reference Service, Library of Congress,... 1964 Edition. Under this subheading, it is said:

> Yielding to "Common sense and the inherent necessities of governmental co-orindation" the [U.S. Supreme] Court has sustained numerous statutes granting in the total vast powers to administrative or executive agencies. Two different theories, both enunciated during the Chief Justiceship of John Marshall, have been utilized to justify these results. First in importance is the theory that another department may be empowered to "fill up the details" of a statute. The second is that Congress may legislate contingently, leaving to others the task of ascertaining the facts which bring the declared policy into operation.[1] (a copy of this is attached as Appendix F-2).

2. The practice of "delegation of powers" in the United States .... And in practice, in 1987, [the U.S. Supreme] Court sustained the authority granted to the Commissioner of Internal

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[1]The Constitution of the United States of America - Analysis and Interpretation (Annotation of cases decided by the Supreme Court of the United States to June 22, 1964) Prepared by the Legislative Reference Service, Library of Congress,...1964 Edition, U.S. Government Printing Office, Washington, 1964, p. 96.

Revenue to designate the marks, brand and stamps" to be fixed to packages of oleomargarine.[2] Soon after, it upheld an act which directed the Secretary of the Treasury to promulgate minimum standards of quality and purity for tea imported into the United States.[3] And later it had approved the delegation to executive or administrative officials of authority to make rules governing the different affairs in their specific field in many cases.[4] (A copy of footnotes 2 and 3 is attached as Appendix F-2 and footnote 4 is attached as F-3).

Therefore, for the four reasons stated above, I believe the power of the Commissioner to make rules and regulations is derived directly from Section 301.7805-1 (a) in The Regulations on Procedure and Administration and indirectly from Section 7805(a) in the Internal Revenue Code of 1986, both of which were rooted in the delegation of powers by the legislative branch to the executive and administrative officers of authority in the executive branch to make rules and regulations to govern the affairs in their respective fields. All of these were expounded before.

(B) The Basis in procedural law

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[2] Ibid., p. 98

[3] Ibid., p. 98.

[4] Ibid., pp. 98-99

The undisputed facts are:

1. Under Point 9 in The Stipulation of Facts, which was agreed to and signed by Mr. Frank D. Armstrong, Jr., Senior Attorney for the Internal Revenue Service, and me and submitted to the Tax Court in the trial on April 4, 1990, which says:

> 9. For the years 1967 through 1984, respondent (the Commissioner) did not disallow any of the petitioner's claims for deductions on rent, and for the year 1984, respondent did not disallow petitioner's claim for deduction on rent and depreciation deduction on his office in home (actually professional library), and for the years 1967 through 1984, respondent did not disallow petitioner's claims for utilities used therein... However, the respondent also did not call the petitioner in, to audit his income tax returns for these years,

(a copy of point 9 made from the Stipulation of Facts, p. 4 is attached as Appendix F-4.

2. and under Point 10 in the Stipulation, it is said:

> 10. For 1985 and 1986, respondent did allow the petitioner's claims for car expenses, miscellaneous expenses, and travel expenses (Schedule C expenses) in the statutory notice of deficiency as listed below:

	1985	1986
Car Expenses	$1,975.44	$1,256.80
Miscellaneous Expense	789.35	783.25
Travel Expenses	616.13	558.87
	$3,380.92	$2,628.92

(A copy of Point 10, made from the stipulation of fact, page 5, is attached as Appendix F-5)

From the above-stated undisputed facts, in The Stipulation of Facts, which I believe would clearly indicate, illustrate, and prove that the acts of allowance and disallowance of my claims for depreciation deductions of my professional library and the deductions of the utilities used therein by the Internal Revenue Service would be arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law, which will lead the reviewing court to apply Section 706 in the Administrative Procedure Act, the pertinent part of which provides:

> Sec. 706 Scope of Review
>
> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall...
>
> (1) ...
>
> (2) hold unlawful and set aside agency action, findings and conclusions found to be
>
> (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ...

(C) The unreasonableness and unconstitutionality of the regulation set up by the Internal Revenue Service to allow $14.00 for the business travel meals expenses for three or four meals (for breakfast, lunch, snack, and dinner), when one travels to New York City, Washington, D.C., or Atlanta, GA, one visits many offices or places in one day, and he does need a snack either in the afternoon or in the night, which does cost money) per day for both out-of-state and in-state business travels for a few days in a trip and a few trips in a year in this time and age such a regulation would seem to be rather harsh, unrealistic, unreasonable, and therefore, unconstitutional. I recall there are many state laws and some municipal ordinances which were declared unconstitutional by the Supreme Court in the past because of their unreasonableness, the cases of which were listed under 20, "The Case Laws" and "e" and "f" "Cases in which the state laws and municipal ordinances were declared to be unconstitutional by the Supreme Court because of their unreasonableness," in "A. Table of Legal Authorities cited and discussed in this case," in this petition.

G. Conclusion - a direct and concise argument amplifying the reasons relied on for the allowance of a writ.

The focus of this dispute is: whether Section 280A(c) (5) of the Internal Revenue Code of 1986 (as amended) or the "restrict paragraph" as defined and discussed before in this petition; or which of these two rules or regulations should take the precedence of the other. I believe the "restricting paragraph" should take the precedence of Section 280A(c) (5) because: (1) I had learned from the trial in the Tax Court on April 4, 1990, that Section 280A(c) (5) took effect in 1975 while the "restricting paragraph" took effect in 1984 (I believe this "restricting paragraph" first appeared in two important IRS Publications: #17, entitled "Your Federal Income Tax for Individuals For Use in Preparing 1984 Returns," and #534, entitled "Depreciation For Use in Preparing (1984) Returns." Therefore, it is a newer rule or regulation, which should take the precedence of the old one; (2) according to §301.7805-1 (a) in The Regulations on Procedures and Administration, promulgated by the Secretary of the Treasury, the commissioner with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the code..... including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue (emphasis added). I believe in publishing the publications which contain the "restricting

paragraph" discussed before, the commissioner rightfully exercised his power to prescribe needful rules to alternate the laws in Section 280A(c) (5); (3) it has the restrictive effects in two ways over the application of Section 280A(c) (5) (in my case, the claim for deductions on an office in home or a professional library in home), namely: first, I placed my professional library in service beginning on May 1, 1984, and not after June 18, 1984, and second, my professional library is used predominantly (more than 50%) in a qualified business use during any tax year and is not not used predominantly (more than 50%) in a qualified business during any tax year.; (4) as stated repeatedly in my petition, dated October 10, 1989, my brief, dated April 2, 1990, to the United States Tax Court; my informal brief, dated August 23, 1990, supplementary informal brief, dated October 19, 1990, and my petition for the rehearing of this case dated February 11, 1991, all of them to the United States Court of Appeals for the Fourth Circuit, the IRS had approved my claims for the deduction of the rent of my professional library (similar to this deduction of the professional library) while I was in Pembroke, North Carolina, and rented an apartment from a landlord and also the deduction of the utilities used in the library for the past eighteen years (1967-1984) without any inquiry, interruption or disallowance of my claims for the deductions during those years; (5) with regard to 1984,

when I moved from Pembroke (where I taught as Professor of Political Science from 1965-1978, and retired at the age of 65 in 1978) to my present home in Fayetteville as my permanent residence in 1984, IRS did approve my claims for the deduction of my rent on my professional library (January to April, 1984) (rent paid to the landlord in Pembroke) and also the depreciation-deduction of my professional library (May to December, 1984) and also the utilities used in the library both in Pembroke and in Fayetteville for the whole year of 1984; and (6) I was told first by Ms. Strickland, (the IRS auditor who audited my 1985 and 1986 income tax returns, the years' returns which are in dispute in this case), and also by Judge Carleton D. Powell, the Special trial Judge in the United States Tax Court on April 4, 1990, that the deductions on all the academic expenses were subject to the "Limitations on Deduction" specified in Section 280A(c) (5) mentioned before, but IRS did allow my claims for deductions in my car expenses of $1975.44 for 1985 and $1256.80 for 1986; miscellaneous expenses of $739.35 for 1985 and $783.25 for 1986; and travel expenses of $616.13 for 1985 and $558.87 for 1986. All of these were undisputed facts, which were stated under Point 10 in the Stipulation of Facts, stated before, which were agreed to, and signed by, a senior attorney of IRS and me, and the stipulation of facts was submitted to the Tax Court in the trial on April 4, 1990. In addition to the above, and as stated in the basis in

procedural law discussed under **Part F, "Reasons for granting a writ,"** before, that all the facts stated before will lead to the application of Section 706 of the Administrative Procedure Act by the reviewing court, which specified that the reviewing court shall "(2) hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law," (emphasis added)....quoted before.

For all the reasons stated under the "Reasons for granting a writ" and also summarized and amplified under the "Conclusion" also stated above, and especially in my comments on the Commissioner's informal brief, dated September 14, 1990, in my supplemental informal brief, dated October 19, 1990, appended in Appendix E-9, pp. Appendix 70 - Appendix 119, in this petition, which presented a sharp contrast between the arguments and positions of the Commissioner of the Internal Revenue, the Appellee, and those of mine, the appellant, in this case, it is respectfully requested that a writ of certiorari to the United States Court of Appeals for the Fourth Circuit be granted by the Supreme Court.

Dated: October 1, 1991

Respectfully submitted,

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Fayetteville, NC 28303
Telephone: (919) 867-3355

Appendixes with 146 pages bound separately

APPENDIXES

TABLE OF APPENDIXES

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   a. A copy of the Decision.....Appendix 6
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1. Constitutional Provisions

a. A copy of Amendment 5 to the Federal Constitution.....Appendix 12

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2. Statutory Provisions.....Appendix 13

a. A copy of Section 280A(c) (5) is made from Internal Revenue Code as of June 5, 1986, Volume 1, Income Tax §§1-1564, Commerce Clearing House, Inc., p. 4224.....Appendix 13

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3. Regulations made by the Secretary of the Treasury and the Commissioner of Internal Revenue.....Appendix 15

a. A copy of Section 301-7805-1(a) is quoted and made from the excerpt of the Regulations on Procedure and Administration,. p. 462. Promulgated by the Secretary of the Treasury and sent to me by Mrs. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, in response to my inquiry to the Commissioner of Revenue.....Appendix 15

b. A copy of the "restricting paragraph," made by the commissioner, in the IRS Publication #17, entitled Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Returns, p. 116.

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1. A copy of a post card, dated 06-21-85, from IRS saying that the matter is cleared up, and I need not take any further action. ..... Appendix 17
2. A copy of a notice, dated October 3, 1985, from IRS, with a "Record of Accounts" to specify their charges. ..... Appendix 18-19
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4. A copy of a notice, dated June 1, 1987, from IRS concerning their examination of my 1984 income tax return. ..... Appendix 21
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6 A copy of my brief (omitting all the Exhibits), dated April 2, 1990 to the United States Tax Court also requesting the Court to vacate the decision of the Internal Revenue Service in its Notice of Deficiency, dated July 21, 1989.

.....Appendix 29-40

7. A copy of my informal brief (omitting all the appendixes), dated August 23, 1990, to the United States Court of Appeals for the Fourth Circuit, requesting the Court to vacate the Decision, entered May 9, 1990, of the United States Tax Court.....Appendix 41-54

8. A copy of the Commissioner's (or the Appellee's) Informal Brief (omitting all the appendixes) dated September 14, 1990 (or a reply to my informal brief.....Appendix 55-69

9. A copy of my supplementary informal brief (omitting all the appendixes), dated October 19, 1990 (as a reply to, and comment on, the Commissioner's informal brief) also requesting the Court of Appeals to vacate the Decision of the United States Tax Court, entered May 9, 1990

.....Appendix 70-119

10. A copy of my petition (omitting all the appendixes), dated February 11, 1991, to the United States Court of Appeals for the Fourth Circuit for a rehearing of this case.....Appendix 120-142

Appendixes F pertaining to Part "F"

1. A copy of the remarks from Judge Carleton D. Powell is made from the official transcript of the trial of this case, scheduled on April 3, 1990, but postponed to April 4, 1990 by the Tax Court, transcribed by On the Record Reporting, Inc., contracted by the Tax Court to do the transcribing, on p. 18 with emphasis added. .....Appendix 143

2. A copy of the paragraph, "Functions Which May be Delegated" is made from the book, The Constitution of the United States of America - Analysis and Interpretation (Annotation of Cases decided by the Supreme Court of the United States to June 22, 1964. Prepared by the Legislative Reference Services, Library of Congress... 1964 Edition, p. 96.....Appendix 144

3. A copy of footnote 4 in my petition referred to footnotes 35 through 48 in ibid, pp. 98-99..... Appendix 145-146

4. A copy of Point 9, made from The Stipulation of Facts, p. 4 .....Appendix 147

5. A copy of Point 10, made from The Stipulation of Facts, p. 5.....Appendix 148

6. A copy of the pertinent part of Section 706 in The Administrative Procedure Act is made from United States Code Annotated, Title 5, Government Organization and Employees, Section 704-5100, St. Paul: West Publishing Co., p. 54.....Appendix 149

Appendix A

III. Appendixes

According to the Table of Contents there is a list of Legal Authorities but without any appendixes pertaining to part "A."

Appendix B

B. Opinions of the Lower Courts below (listed separately with the texts and with page numbers printed after "Appendix" which are different from the page numbers listed in the petition.

1. A copy of the Judgment and Opinion from the United States Court of Appeals for the Fourth Circuit in this case, dated January 31, 1991

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-2148

MIN-CHUAN KU,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee.

Appeal from the United States Tax Court. Carleton D. Powell, Tax Court Judge. (25028-89)

Submitted: November 28, 1990 Decided: January 31, 1991

Before PHILLIPS and MURNAGHAN, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Appendix B

Affirmed by unpublished per curiam opinion.

Min-Chuan Ku, Appellant Pro Se. Gary R. Allen, Richard Farber, Rosemary Schrauth, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

Appendix B

PER CURIAM:

Min-Chuan Ku challenges the tax court's order upholding the commissioner's assessment of deficiencies in his 1985 and 1986 federal income taxes. Our review of the record and the tax court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the tax court. Min-Chuan Ku v. Commissioner, Tax Ct. No. 25028-89 (May 9, 1990). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix B

2. A copy of an Order to deny my petition for a rehearing of this case by the United States Court of Appeals for the Fourth Circuit, dated February 26, 1991.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

February 26, 1991

No. 90-2148

MIN-CHUAN KU

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

ORDER

Upon consideration of the appellant's petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

For the Court,

JOHN M. GREACEN

CLERK

Appendix B

3. A copy of the Decision and Opinions from the United States Tax Court, dated May 9, 1990.

a. A copy of the Decision

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

MIN-CHUAN KU,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No.
	)	25028-89
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.		

DECISION

For reasons shown in the Court's Bench Opinion of April 4, 1990, it is

ORDERED AND DECIDED that there are deficiencies in petitioner's 1985 and 1986 Federal income tax liabilities in the respective amounts of $1,182 and $879.

(Signed) CARLETON D. POWELL
Carleton D. Powell
Special Trial Judge

Entered: May 9, 1990

Appendix B

b. A copy of the opinion in the notice of service of transcript and the transcript from the Clerk of the Court.

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

May 7, 1990

MIN-CHUAN KU, Petitioner,	)	
v.	)	Docket No. 25028-89
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

NOTICE OF SERVICE OF TRANSCRIPT

Pursuant to Rule 152(b), Rules of Practice and Procedure of this Court, there is transmitted herewith to petitioner and to respondent a copy of the pages of the transcript of the trial of the above case before Special Trial Judge Carleton D. Powell, at Winston-Salem, North Carolina, on April 4, 1990, containing his oral findings of fact and opinion rendered at the conclusion of the trial.

In accordance with the oral findings of fact and opinion, a decision will be entered for respondent.

Charles S. Casazza
Clerk of the Court

Served: May 9, 1990

c. Bench Opinion by Judge Carleton D. Powell

Docket Number 25028-89, April 4, 1990

The Court has decided to render oral findings of fact and opinion, and the following represents the Court's oral findings of fact and opinion:

This case was called from the calendar during the Court's trial session in Winston Salem, North Carolina. This constitutes the Court's opinion in this matter.

Respondent determined deficiencies in Petitioner's 1985 and 1986 federal income tax liabilities in the respective amounts of $1,182 and $879 arising from the disallowance of various so-called home office expenses and travel expenses in excess of those allowed by Respondent.

With regard to the home offices expenses, it is undisputed that Petitioner maintained a home office that was used in a trade or business within the meaning of Section 162. It is also undisputed that Petitioner had no gross income from the use of the home office during the years in question.

While Section 162 provides a deduction for ordinary and necessary business expenses and Section 167 provides a deduction for an allowance of depreciation for property used in a trade or business.

Section 280(A)(a) generally disallows such deductions with respect to the use of a dwelling unit.

Section 280(A)(c) provides exceptions to the general rule. However, such deductions are limited to the gross income from the trade or business during the taxable years. Since the taxpayer received no gross income during either of the years in question, no deductions are allowable.

With respect to Petitioner's claimed travel expenses, Section 162 again provides a basis for such a deduction.

However, Section 274(d) provides that no deduction is allowable under Section 162 unless the taxpayer substantiates such deductions as provided. Petitioner has no such substantiation. Accordingly no deductions for travel and entertainment are allowed in excess of those allowed by Respondent.

We can commiserate with the Petitioner. On initial blush, all of the deductions claimed are allowable on either Section 162 or 167. Both of these Sections however, are conditioned by Sections 280(A) and 274(d). And Petitioner has not satisfied these conditions.

To the extent that Petitioner asked us to declare these latter sections unconstitutional, we decline to do so. Decision will be entered for Respondent.

Appendix B

This ends the Court's bench opinion in this case.

(Whereupon, at 10:30 a.m., this bench opinion was concluded.)

d. A copy of a special part excerpted from the official transcript by On the Record Reporting on page 18, which is relevant to this case, and quoted below, but which is somewhat different from the transcript sent to me by the Clerk of the Tax Court.

> This is not--Mr. Ku. Whatever the publications say are not the laws. This [he referred to the book he waved which later I found to be The Internal Revenue Code of 1986 (as amended)] is the law. This is what I am bound by.[1]

---

[1] This specified part is taken from page 18 in the official written transcript done by On the Record Reporting, Inc, and certified by the two transcribers that the contents in this transcription from page 1 through 39, inclusive are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Anita K. Benson, an officer or staff member of the Tax Court on April 4, 1990. A copy of this remark by the Judge is attached as Appendix F-1 below.

Appendix B

4. **Other Appendixes (Appendixes other than the Lower Court's Opinions)**

   a. All appendixes pertaining to part "A" are listed as A-1, A-2, A-3,. etc., to part "B" are listed as B-1,. B-2, B-3, etc. and to part "C" are listed as C-1, C-2, C-3, etc. If there are not any appendix pertaining to a part, then there will not be any appendix listed under that part.

   b. Appendixes pertaining to part "D"

   c. Appendixes pertaining to part "E"

   d. Appendixes pertaining to part "F"

Appendix D-1

D-1 Constitutional Provisions.

a. A copy of Amendment 5 to the Federal Constitution.

> No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation. (emphasis added)

b. A copy of Amendment 14 to the Federal Constitution .

> *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added)

A copy of both Amendment 5 and 14 are quoted from James MacGregor Burns, J. W. Peterson, Thomas E. Cronin, Government by the People, 4th Edition, National Edition, Prentice-Hall, Inc., Englewood Cliffs, New Jersey (without a page number in the book).

Appendix D-2

D-2 Statutory provisions:

a. A copy of Section 280A(c) (5) is made from Internal Revenue Code as of June 5, 1986, Volume 1, Income Tax §§1-1564, Commerce Clearing House, Inc., p. 4224.

- - - -

- - - -

(5) LIMITATION OF DEDUCTIONS–In the case of a use described in paragraph (1), (2), or (4) and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of–

(A) the gross income derived from such use for the taxable year, over

(B) the deductions allowable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

b. A copy of Section 7805(a) is quoted and made from The Internal Revenue Code of 1986 (as amended)

Section 7805 Rules and Regulations and (a) Authorization in the Sec. 7805 (a) in the Code says:

(a) Authorization - Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of alteration of law in relation to internal revenue (emphasis added)

c. A copy of Section 706 of The Administrative Procedure Act is made from United States Code Annotated, Title 5, Government Organization and Employees, Section 704-5100, St. Paul: West Publishing Co., P. 54, which is attached as F-6.

Appendix D-3

D-3 Regulations made by the Secretary of the Treasury and the Commissioner of Internal Revenue.

a. A copy of Section 301.7805-1 (a) is quoted and made from the excerpt of the Regulations on Procedure and Administration, p. 462. Promulgated by the Secretary of the Treasury and sent to me by Mrs. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, in response to my inquiry to the Commissioner of Revenue.

.....

301.7805-1 Rules and regulations.

> (a) Issuance. The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue (emphasis added).

b. A copy of the "restricting paragraph," made by the commissioner, in the IRS Publication #17, entitled Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Returns, p. 116.

Appendix D-3

Certain Property placed in service or leased after June 18, 1984. There are limited on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not used predominantly (more than 50%) in a qualified business use during any tax year. ..... (emphasis added)

Appendix E-1

E-1 A copy of a post card, dated 06-21-85, from IRS saying that the matter is cleared up, and I need not take any further action.

Internal Revenue Service Center
Memphis, TN 37501

Official Business
Penalty for Private Use, $300

STAMP
Postage and Fees
Paid Department
of the Treasury
554

Min-Chuan Ku
340 Loch Stone Court
Fayetteville, NC 28303

Date: 06-26-85

Dear Taxpayer:

Thank you for your response of 05-16-85 to our recent correspondence.

We are pleased to tell you that your explanation enabled us to clear up the matter. You need not take any further action.

Thank you for your cooperation.

Sincerely yours,

Chief Information Returns Branch

Letter 1797(SC) (Rev. 7-84)

Appendix E-2

E-2 A copy of a notice, dated October 3, 1985, from IRS, with a "Record of Accounts" to specify their charges.

Department of the Treasury
Internal Revenue Service
Memphis, TN 37501

OMB Clearance No.: 1545-0074
In reply refer to: 49411807
Oct 03, 1985 LTR 1455C
067-28-3001

Min-Chuan Ku
340 Loch Stone Court
Fayetteville, NC 28303

Social Security Number: 067-28-3001

Dear Mr. Ku:

This is in response to your inquiry dated Sept. 5, 1985, regarding your 1982 and 1983 tax accounts.

The information on the post card regarding your 1982 account is advising you that your explanation, regarding the income in question, was accepted and no further action was being taken on the account.
A summary of your 1983 account is enclosed showing the credits, payments and assessments made. When an income tax return is more than 60 days late, a minimum penalty is added of not less than $100.00 or 100% of tax due on the return. You were assessed $100.00. Interest is compounded and will continue to accrue until the full amount is paid. (emphasis added).

Unless you have additional questions, no reply to this letter is necessary.

Be sure to include this letter with your reply. The copy of this letter is for your records. An addressed envelope is enclosed for your convenience.

Thank you for your cooperation.

Sincerely,
Catherine B. Harmon
Chief, Correspondence Section

Enclosures:
Copy of this letter
Envelope
Notice 610 / 609

Continuation Sheet	Tax Form Number	Social Security or Employer Identification Number	Sheet ___ of ___
Record of Accounts	1040	067-28-3001	

Tax Period Beginning or Ended	Date of Credit or Assessment	Assessments	Credits	Accrued Penalty	Accrued Interest	Account Balance	Remarks
Dec 31, 1983	041503		500.00				Payment
	061583		800.00				Payment
	100383		800.00				Payment
	012684		800.00				Payment
	110584		516.34				Payment
	010885	3480.00	63.66				Sal & Withholding
	052085	100.00					Late Filing penalty
	052085	18.07					Late payment penalty
	052085	42.47					Interest
	102585				8.21		If paid by 102585
		3640.54	<3480.00>		8.21	168.75	If paid by 102585

* Underlines above are emphasis added

Appendix E-3

E-3 A copy of a notice, dated November 17, 1987, from IRS, saying that there records show that there is no balance due on the account, and my 1983 account is paid in full.

Department of the Treasury
Internal Revenue Service
Memphis, TN 37501

In reply refer to: 49415427
Nov 17, 1987 LTR 549C
067-28-3001

Min-Chuan Ku
340 Loch Stone Court
Fayetteville, NC 28303

Taxpayer Identification Number:	067-28-3001
Form Number:	1040
Tax Period Ended:	Dec. 31, 1983
Your Correspondence Dated:	Oct. 22, 1987

Dear Min-chuan Ku:

Thank you for your inquiry about the above tax account. Our records show that there is no balance due on the account.*

According to our records we have deleted the $4.67 from your 1983 individual account, and therefore you 1983 account is paid in full.*

If you have any questions, you may write to us at the address on this letter or call the Internal Revenue Service number listed in the telephone directory for your area. If you write, please attach this letter to help us identify your file.

We hope this information is helpful to you.

Sincerely yours,

C. B. Harmon
Chief, Correspondence Section

Enclosure:
Copy of this letter

---

* Underlines above are emphasis added.

Appendix E-4

E-4 A copy of a notice, dated June 1, 1987, from IRS concerning their examination of my 1984 income tax return.

Department of the Treasury
Internal Revenue Service
Memphis, TN 37501

Date of this notice: June 1, 1987
Taxpayer identifying Number:
067-28-3001
Form: 1040 Tax Period:
1-800-424-1040 ST of NC

Min-Chuan Ku
340 Loch Stone Court
Fayetteville, NC 28303

Or you may write to us at the address shown at the left. If you write, be sure to attach the bottom part of this notice.

Amended Return Acknowledgement

We received your amended return for the tax year indicated above..

We will review your return as soon as possible. Since we have a large number of similar requests, it may take as long as 3 months before yours is processed. We apologize for any inconvenience this delay may cause you.

You will receive a notice from us regarding this tax year when the change has been completed.

.....

.....

Appendix E-5

E-5 A copy of my petition, dated October 10, 1989, to the United States Tax Court, requesting the Court to vacate the decision of the Internal Revenue Service in its Notice of Deficiency, dated Juiy 21, 1989.

(First)	(Middle)	(Last)	)
Min	Chuan	Ku	)
(Please Type or Print)			) Docket No.
v.			)
COMMISSIONER OF INTERNAL REVENUE			)
		Respondent	)

PETITION

1. Petitioner(s) disagree(s) with the tax deficiency(ies) for the year(s) 1985 and 1986, as set forth in the NOTICE OF DEFICIENCY dated July 21, 1989, A COPY OF WHICH IS ATTACHED. The notice was issued by the Office of the Internal Revenue Service at Greensboro, North Carolina.

Greensboro, North Carolina

(CITY AND STATE)

2. Petitioner(s) taxpayer identification (e.g. social security) number(s) is (are): 067-28-3001

3. Petitioner(s) dispute(s) the following:

Appendix E-5

Year	Amount of Deficiency Disputed	Addition to Tax (Penalty) if any, Disputed	Amount of Over-payment Claimed
1985	$1182.00		
1986	$ 879.00		

4. Set forth those adjustments, i.e., changes, in the NOTICE OF DEFICIENCY with which you disagree and why you disagree.

I. I disagree with all the adjustments made by IRS in its Notice of Deficiency of July 21, 1989, on my claims for (1) the depreciation and deduction of my "office in the home" (actually my "Professional Library in the home"; (2) the deductions on the utilities used in the library, both of which in my 1985 and 1986 income tax returns, except the adjustment of $294.00 made on my car mileage expenses for travel in 1985 (Please see the IRS Notice of Deficiency for details) for the following reasons:

(1) "Office in the home" is actually my "professional library in the home," as indicated in Enclosure 1 to Schedule C in my 1985 income tax return, and I recall in all other returns to go back from 1985 to 1967; but I might not make it clear in my 1986 return because I was not aware of the significance of the term, "Professional library."

[Petitioner(s) request(s) that this case be conducted under the "small tax case" procedures authorized by Congress to provide the taxpayer(s) with an informal, prompt, and inexpensive hearing at a reasonably convenient location. Consistent with these objectives, a

(continued on the next page)

decision in a "small tax case" is final and cannot be appealed to higher Courts (the Courts of Appeals and the Supreme Court) by the Internal Revenue Service or the Petitioner(s).*

340 Loch Stone Court, Fayetteville NC 28303; Tel. 1-919-867-3355

Signature of Petitioner Date — Present Address -Street,City,State,Zip Code- Telephone No.

Signature of Petitioner Date — Present Address -Street,City,State,Zip Code- Telephone No.

Signature and address of counsel, if retained by petitioner(s) Date

*If you do not want to make this request, you should place an "X" in the following box. |____X____|

T.C. Form 2 (Rev. Sept. 1982)]

NOTE: The above quotation inside the brackets are extra statements on the petition form printed by the Court.

(2) I believe "Professional Library" is depreciable and deductible (Please see the provisions under "Professional Library" in column 1, on page 3, in the IRS Publication, Depreciation (Rev. No. 88) (omitting quoting here to save space).

(3) Utilities used in the "Professional Library" are deductible (please see the provisions under §1.162-6, "Professional expenses" in the Income Tax Regulations (as above).

(4) I believe my "Professional Library" is my "Idle asset" which is depreciable and deductible under "Idle asset in column 1, on page 3, in the same IRS Publication, Depreication, mentioned above (as above.)

(5) Besides, §15322, "Idle periods," under (d) "Idle Property" on page 15019 in Prentice Hall: Federal Tax Guide, 1989, Vol. I, says:

> "Property is depreciable during intermittent periods when idle but ready for use." (P. Dougherty Co. v. Comm., 159 F2d 269, 35 AFTR 669 cert den.)

(6) Further, §15335, on page 15021 says:

> "Requirement that property be used in business or held for the production of income." - Depreciation allowed on property held for income though no income was produced." (RevRul 55-579, 1955-2 - CB47....

(7) Furthermore, there were the firm precedents of 18 years (1967-1984). I recall and believe that my claims for the deduction on my "office in the home" (or actually my "professional library in the home" and the deduction on the utilities used therein for 18 years (1967-1984), which were approved by IRS (or the refunds paid by IRS as requested), without any inquiry, interruption, or disallowance; but all of a sudden, IRS disallowed my claims for the depreciation and deduction on my professional library and the deduction of the utilities used therein in my 1986 income tax return, and later when I amended my 1985

income tax return, namely to add the car expenses used in 1985, IRS also disallowed my claims for the depreciation and deduction on my "Professional Library" and also the deduction on the utilities used therein in my 1985 income tax return.

I recall Black's Law Dictionary, Fifth Edition, under "precedent" says, inter alia, "A course of conduct once followed which may serve as a guide for future conduct." In this connection, may I say that the general purpose of the law is to maintain continuity and stability of the society.

II. I also disagree with the adjustment made by IRS in its Notice of Deficiency to reduce my travel meals from $25.00 per day to $14.00 per day for four meals a day (breakfast, lunch, snack, and dinner) for four or five days during each trip, namely: I made two distant trips in 1985: One was to Washington, D.C., where I stayed for four days to claim or estimate the total meals at $100.00, with an average of $25.00 a day, and another was to New York City, where I stayed for five days to claim or estimate the total meal expenses for five days at $125.00, with an average of $25.00 a day; and two distant trips in 1986: One was to Washington, D.C., where I stayed for five days to claim or estimate the expenses for meals at $125.00, with an average of $25.00 a day; and another was to Atlanta, GA., where I stayed for four days to claim or estimate the total meals at $100.00, with an average of $25.00 per day.

Appendix E-5

I believe to claim or estimate the meal expenses of $25.00 per day for a short visit of four or five days in Washington, D.C., New York City, and Atlanta, GA is ordinary, necessary, and reasonable, and even underestimated for the lack of receipts, and not at all lavish or extravagant. To cut it by IRS in its Notice of Deficiency of July 21, 1989, from $25.00 to $14.00 per day is rather harsh, unrealistic, and therefore, unreasonable, despite that Revenue Procedure 83-71 has set standard daily meal allowance at $14.00 for travel requiring a stay of less than 30 days in a general locality where a taxpayer is pursuing a trade or business.

I recall there were many state laws which were declared to be unconstitutional by the US. Supreme Court because of their unreasonableness.

In addition, according to §11044 "Allowances based on estimates" on page 11015 in Prentice Hall: Federal Tax Guide, 1989, Vol. I, (cited before) which says:

> "Taxpayer has burden of proving correctness of deductions that he claims either in his return, in a claim for refund, or contesting deficiency determined by IRS. But approximations or close estimates are permitted by Court. Under so called Cohan rule, use of estimates is allowed absence of records of exact amount of expenses. (Cohan v. Comm., 39 F2d 540, 8 AFTR 10552).

III. In view of the above, I am requesting that the U.S. Tax Court kindly vacate the disallowances by IRS of my claims for (1) the depreciation and deduction of my professional library, (2) the deduction of the utilities used therein, and (3) the reduction of my travel meals expenses from $25.00 (out of state) and $17.50 (in-state) to $14.00 per day for both out-of-state and in-state travel meals expenses in my income tax returns of both 1985 and 1986, except the adjustment made on my car mileage deductions, namely: To claim 21 cents per mile for deduction in travel, which I mistakenly put in my 1985 income tax return.

IV. Finally, I suspect that there might be numerical errors in the IRS Notice of Deficiency, which are too cumbersome to discuss here, and which I shall try to straighten out with IRS after the questions of all (except one, as mentioned above), adjustments made by IRS in its Notice of Deficiency on my 1985 and 1986 income tax returns are finally resolved.

Appendix E-6

E-6 A copy of my brief (omitting all the Exhibits), dated April 2, 1990 to the United Tax Court also requesting the Court to vacate the decision of the Internal Revenue Service in its Notice of Deficiency dated July 21, 1989.

Min Chuan Ku	)	
	)	
Petitioner	)	
	)	
	)	Docket No. 25028-89
	)	
v.	)	
	)	
Commissioner of Internal Revenue	)	
	)	
Respondent	)	

Brief For Petitioner

I disagree with all the adjustments (or disallowances, hereto after referred to as disallowances) by the Internal Revenue Service in its Notice of Deficiency dated July 21, 1989, on my claims in my 1985 and 1986 income tax returns. The disallowances, or the issues of this dispute may be grouped into the following three categories, namely: I. the disallowance of my claims for the depreciation deduction on my "office in the home" (or actually my "professional library" in the home, hereto after referred to as my "professional library;" II. the disallowance of my claims for the deductions on the utilities used in the library; and III. the reduction of my claims for the deduction on my academic travel meals from $25.00 per day (out-of-state) and $17.50 per day (in-state) in a few

trips each year and each time for a few days to $14.00 per day for both out-of-state and in-state travels, except the disallowance of the claims for the deduction of $294.00 for my car mileage expenses by IRS in my 1985 income tax return, which was redundant (because I claimed for the deduction on the car's expenses the other way already, namely: the repairs of the car and the gas consumed, etc.), and which, I admit, was an innocent error on my part.

Below are the gists of the bases on which IRS proposed the disallowances and my answers to them under each of these categories:

I. The disallowances of my claims for the depreciation deduction on my professional library in the home.

1. The IRS bases: At the time of auditing my 1986 income tax return (and later the 1985 income tax return because I amended it by adding the car's expenses in it) and at my request, Ms. Strickland, the IRS Auditor, told me that IRS disallowed my claims for depreciation deduction on my professional library because I did not meet the requirements contained in Section 280A (c) (5) in the Internal Revenue Code, as of June 5, 1986, Vol. 1, Income Taxes §§1-1564, Commerce Clearing House, Inc., Chicago, Ill, (a copy of which is enclosed as Exhibit 1), which says:

> In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph 3 where the dwelling unit is used

> by the taxpayer during the taxable year as a residence, the deduction allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of–
>
> (A) the gross income derived from such use for the taxable year, over
>
> (B) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

And I did not earn any income from this sources (teaching or doing research) in 1985 and 1986. And, therefore, I did not meet this requirement.

2. My answers to the IRS argument.

a. My answer to the IRS argument is based on the statements stated under the subheading, "Certain property placed in service or leased after June 18, 1984" in the IRS Publication 17, (Rev. No. 85), entitled, "Your Federal Income Tax, For individuals, For preparing 1985 Returns," in column 1, on page 115 (a copy of which is enclosed as Exhibit 2), which says:

> CERTAIN PROPERTY PLACED IN SERVICE OR LEASED AFTER JUNE 18, 1984- There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not used predominantly (more than 50%) in a qualified business used during any tax year.

Similar quotation may be found in IRS Publication 534 (Rev. Dec. 86) Depreciation, in column 3, on page 1 (a copy of which is enclosed as Exhibit 3).

Firstly, I assume and believe that (a) the certain other property stated in the above quotation refers to, or at least includes the "professional library in my home" and (b) the "limits" in the above quotation refers to, or at least includes, the limitations in Section 280A (c) (5) quoted before. Should these be true, then my answers to the IRS argument stated before are twofold. Firstly, my professional library has been placed in service beginning on May 1, 1984, and not after June 18, 1984, and Secondly, my professional is used predominantly (more than 50%) and not not used predominantly in a qualified business in any tax year. Therefore, the limitation on deductions in Section 280A (c) (5) should not be applied to my claims for the depreciation deductions on my professional library in my income tax returns of 1985 and 1986.

b. To prove the validity of this point, I claimed for the deduction on the "rent" on my professional library when I rented others apartment, year after year, for the past eighteen years (1967 – October 1984) without any inquiry, interruption, or disallowance from IRS. That being so, I believe not because I had a friend at the Chase Manhattan, who I did not, but because I have learned from the daily news (radio, TV, and newspapers) that there was a mass resignation of staff members

from IRS in the early 1980's. And as a result, IRS has lost so many pros or old hands in staff members, who knew what they were doing, and who knew not only the conspicuous rules and regulations, such as Section 280A (c) (5) quoted before but also the obscure exceptions, such as in the statements under the subheading, 'Certain property placed in service or leased after June 18, 1984," contained in both the IRS Publications Numbered 17 and 534 also quoted before; and I also believe that the obscure exceptions are as important, if not more, as the conspicuous rules and regulations in the administering of the income tax laws (in the Code,) rules, regulations, and procedures, and, above all, also in the pursuit of justice.

II. The disallowance of my claims for the deductions on the utilities used in the library.

1. The IRS bases for the disallowance.

a. The utilities were used in the library also at the time of auditing my 1986 income tax return (and later the 1985 income tax return, which was following suit of the 1986 income tax return) and also at my request, Ms. Strickland, the IRS Auditor, told me that since my claims for depreciation deduction on my professional library were disallowed, and my claims for the deductions on the utilities used in the library were also disallowed because the utilities were used in the library.

b. Both the depreciation deduction on the professional library and the utilities used in the library were subject to the same limitation on deductions contained in Section 280A (c) (5) quoted before.

2. My answers to the IRS's bases.

a. I believe that from my answers in "a" and "b" stated above to the IRS's bases for disallowance of my claims for depreciation deduction on my professional library, it is very clear that there is no reason or legal basis for IRS to disallow my claims for depreciation deductions on my professional library because: 1. I placed my professional library in service beginning May 1, 1984, and not after June 18, 1984, and 2. my professional library is used predominantly (more than 50%) in my qualified business in the tax years involved and not not used predominantly.

b. Besides, I claimed for the deductions on the utilities used in the library based on Section 1.162-6 in the Income Tax Regulations (the original copy was sent to me by Mr. Reichard Cladwell, Chief of the Technical Research and Assistance Section of IRS in his letter of September 1, 1989, to me, and a copy of which is enclosed as Exhibit 4), which says:

Regulations.

[1361] §1.62-6

PROFESSIONAL EXPENSES. -- A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid or accrued in the operation and repair of an automobile used in making professional calls, dues to professional societies and the subscriptions to professional journals, the rent paid or accrued for office rooms, the cost of the fuel, light, water, telephone, etc. used in such offices, and the hire of office assistants. Amounts currently paid or accrued for books, furniture, and professional instruments and equipment, the useful life of which is short may be deducted. Reg. 1.162-6.

From the IRS's Notice of Deficiency dated July 21, 1989, and under Point 10, in the Stipulation of Facts, IRS did allow my claims for the deductions on, inter alia, miscellaneous expenses, which, I recall, from Enclosure 4 to my 1985 return and from Enclosure d. to my 1986 return, include: (1) professional books, professional dues and registration fees, newspaper, editing and typing, entertainments, postage stamps, office equipments and supplies, which are very similar to, or on the same footing, with those items provided in Section 1.162-6 in the Income Tax Regulations quoted above; then why did not IRS allow my claims for depreciation deduction on: (1) my professional library, which is similar to the "rent paid or accrued for office rooms" in Section 1.162-6 and (2) the utilities used in the library, which is similar to "the cost of fuel, light, water, telephone, etc.," also in Section 1.162-6 in the Income Tax Regulations, quoted above.

III. The Reduction of my claims for the deduction of my travel meals expenses from my claims for $25.00 per day (out-of-state) and $17.50 per day (in-state) for a few trips each year and for a few days in each trip to $14.00 per day for both out-of-state and in-state travels.

1. The IRS basis for this reduction. Also at the time of auditing my 1986 income tax return and at my request, Ms. Strickland, the IRS Auditor, told me that the basis for this reduction was from the provisions (the original copy of which was given to me by Ms. Strickland, and a copy of the original copy is enclosed as Exhibit 5), which says:

> Under Reg. 1.274-5 (h), the IRS exercised its authority and created an optional method of computing travel-related meal expenses that allows a taxpayer to elect a set amount for meals without having to provide detailed records proving actual costs. This regulation was given effect by Rev. Proc. 83-71 at .421, below, which has set standard daily meal allowance at $14 for travel requiring a stay of less than 30 days in one general locality (underlining is mine) where a taxpayer is pursuing a trade or business, and $9 for a stay of at least 30 days....

2. My answers to the above basis.

a. I believe that IRS has improperly read and applied the regulation quote above. I believe Rev. Proc. 83-71 at .421 has set standard daily meal allowance at $14 for travel requiring a stay of less than 30 days in one general locality (underlining is mine) where a

taxpayer is pursuing a trade or business. I recall and believe that both Washington, DC, and Atlanta, GA, are about 300 miles and New York City is about 600 miles away from Fayetteville, NC, (without actually or scientifically measuring them, these were the cities where I traveled to, some in 1985 and some in 1986), where I live. To group them as in a general locality as IRS did it in the above basis is beyond the stretch of my imagination.

b. By rule of thumb I did a survey from the menus of Canton Station, a Chinese restaurant in Fayetteville, Holiday Inn and Howard Johnson, two American restaurants in Lumberton, N.C., and some casual receipts from another Holiday Inn in Raleigh, N.C., without burdening the Court of reading them, I believe, by rule of thumb, to claim for the travel meals of $25.00 per day (out-of-state) and $17.50 per day (in-state) for academic travels for a few trips in each year and for a few days in each trip is normal and necessary and not at all lavish or extravagant, and to cut them down from $25.00 per day (out-of-state) and $17.50 per day (in-state) to $14.00 per day for both out-of-state and in-state is too harsh, unrealistic, and, therefore, unreasonable. And I recall there were many state laws which were declared to be unconstitutional by the United States Supreme Court because of their unreasonableness. The specific cases are scattered between pages 1405 and 1521 in the *Constitution of the United States of America, Analysis*

and Interpretation, the 1964 Edition printed by the U.S. Government Printing Office, Washington, 1964.

c. The State of North Carolina does not require receipts for reimbursement of meals. In a letter dated March 28, 1990, from Ms. Ila Gray, Director of Financial Services at Pembroke State University (where I taught, 1965-1978, a copy of which is enclosed as Exhibit 6), which says:

> The State of North Carolina does not require receipts for reimbursement of meals. The current State allowance for meals for overnight travel is:
>
> | | In-State | Out-of-State |
> |---|---|---|
> | Breakfast | $4.00 | $5.00 |
> | Lunch | $6.00 | $7.00 |
> | Dinner | $11.00 | $14.00 |
> | Total | $21.00 | $26.00 |

d. I recall my claim for the deduction of travel meals of $25.00 per day to Atlanta, GA, in my amended 1984 income tax return dated April 13, 1987. (a copy of this part of the amended return is enclosed as Exhibit 7) was approved or not disallowed.

e. Allowance based on estimates. According to §11044, "Allowance base on estimates" on page 11015 in Prentice Hall: Federal Tax Guide, 1989, Vol I (a copy of which is enclosed as Exhibit 8), which says:

Appendix E-6

> Taxpayer has burden of proving correctness of deductions that he claims either in his return, in a claim for refund, or contesting deficiency determined by IRS. But approximations or close estimates are permitted by Court. Under the so-called Cohan rule, use of estimates is allowed absence of records of exact amount of expenses. Cohen v. Comm., 39 F2d 540, 8 AFTR 10552.

Finally and in summary, in addition to what I stated in my petition to the Tax Court dated October 10, 1989, I specifically quoted the provisions under the subheading, "Certain property placed in service or leased after June 18, 1984, from the IRS Publications numbered 17 and 534, and repeated quoting Section 1.162-6 in the Income Tax Regulations, plus the five seasons stated above this Brief to support my claims for the deduction of my travel meals; I am requesting that the United States Tax Court kindly review this case, vacated all the disallowances made by IRS in its Notice of Deficiency dated July 21, 1989, namely: (1) the disallowances of my claims for (a) the depreciation deduction on my professional library, and (b) the deduction on the utilities used in the library, and (c) the reduction of my travel meals from $25.00 (out-of-state) and $17.500 (in-state) per day to $14.00 for both out-of-state and in-state per day, except the disallowance made on my claim for my car mileage deductions, namely to claim 21 cents per mile for deduction in travel in my 1985 return, which was redundant, because I claimed the deduction of my car expenses the other way, namely I claimed the deductions on the repairs of the car, the gas

consumed, etc., already, and which I mistakenly put in my 1985 income tax return.

Incidentally, I suspect that there might be some numerical errors in the IRS Notice of Deficiency, which are too cumbersome to discuss here, and which I shall try to straighten out with IRS after the questions of all disallowances, except one, mentioned above, made by IRS in its Notice of Deficiency dated July 21, 1989, on my 1985 and 1986 income tax returns are finally resolved.

Respectfully submitted,

Date: April 2, 1990

Min-chuan Ku
Address: 340 Loch Stone Ct.
Fayetteville, NC 28303
Tel. 1-919-867-3355

E-7 A copy of my informal brief (omitting all the appendixes), dated August 23, 1990, to the United States Court of Appeals for the Fourth Circuit, requesting the Court to vacate the Decision, entered May 9, 1990, of the United States Tax Court.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

90-2148 Ku v. Commissioner

25028-89

INFORMAL BRIEF

Answers to Questions

1. Did the tax court fail to consider important grounds for relief? If so, what grounds?

Yes, the question is answered in two parts separately:

a. With regard to the IRS' disallowance of my claims for (1) the depreciation deductions of my professional library and (2) the deductions on the utilities used in the library.

Firstly, I believe the tax Court has failed to adequately consider the provisions under the subheading, "Certain property placed in Service or Leased after June 18, 1984," and under the heading "What Can Be Depreciated," in Chapter 26, "Depreciation" on page 116 in the IRS Publication 17 (Rev. Nov. '84), Your Federal Income Tax (For individuals, For use in preparing 1984 Returns), which says: "Certain

Appendix E-7

Property Placed in Service or Leased after June 18, 1984- There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not used predominantly (more than 50%) in a qualified business use during any tax year ..." (A copy of this page is attached as Appendix 1), which (the Publication), I believe, is made by the IRS through the power or authority delegated to the IRS, whether generally or specifically, directly or indirectly (through the Secretary of the Treasury) from the Congress, and which, I believe, was made to interpret, carry out, execute, implement, or even supplement (modify or replace the laws enacted by the Congress if it is made after the laws enacted by the Congress, despite my contentions in both my brief, dated April 2, 1990, and my oral arguments in the trial on April 3, 1990; [postponed to April 4, 1990 by Tax Court.].

Secondly, the Tax Court has failed adequately to take my contentions into consideration that the IRS did allow my claims for deductions on the rents of my professional library in my income tax returns 1967-1984 when I rented an apartment from a landlord and two-thirds of my claims for the depreciation deduction on my professional library in my 1984 return when I bought and owned a house in Fayetteville in 1984 and the deductions on the utilities used in the library

from 1967 through 1984 as stated under point 9 in the Stipulation of Facts submitted to the Tax Court in the trial on April 4, 1990; but the Court disallowed my claims for the depreciation deduction on my professional library and also the deductions on the utilities used in the library in my 1985 and 1986 income tax returns (the years returns are in question in this case). Again, both of these two items (namely: depreciation deductions on the professional library and also deductions on the utilities used in the library; or deductions on "rent paid for office rooms, and cost of fuel, light, water, and telephone used in the office") are included under "Professional Expenses" in Sec. 1.162-6 in the Income Tax Regulations, the original copy of this section was sent to me by Mr. Richard Caldwell, Chief, Technical Research and Assistance Section of IRS in his letter of September 1, 1989, to me and a copy of this copy is enclosed as Appendix 2, then why did the IRS allow my claims for deductions on some items (say: car, miscellaneous, and travel expenses as listed under point 10 in the Stipulation of Facts) but disallow my claims for deductions on my professional library, and also the deductions on the utilities used in the library in my 1985 and 1986 returns. I believe all of these items are included under "Professional Expenses" in Sec. 1.162-6 in the Income Tax Regulation stated above. The above stated facts adequately illustrate that the IRS acts of allowances and disallowances on my claims for deductions in the past

are arbitrary and capricious, about these, Section 706 of the Administrative Procedure Act provides in pertinent part: "The reviewing court shall -... (2) hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;..." (A copy of this is enclosed as Appendix 2).

b. With respect to the IRS' reduction of my claims for travel meals expenses.

(1) My reasons for claiming $25.00 per day (out-of-state) and $17.50 per day (in-state) for a few academic trips in 1985 and 1986 (the years returns are in question) and a few days in each trip are that they are ordinary and necessary and not at all lavish and extravagant, which have been stated clearly and succinctly under five points, namely: a., b., c., d., and e., beginning on page 5 in my brief dated April 2, 1990, (a copy of which with a few changes to eliminate a few typographical errors is enclosed as Appendix 3) to the Tax Court. To highlight them, I believe the standard daily meal allowance at $14.00 for travel requiring a stay of less than 30 days in one general locality (emphasis added) where a tax-payer is pursuing a trade or business, and $9.00 for a stay of at least 30 days, which has been set up by IRS under Regulation 1.274-5(h) as quoted on page 5 in my brief, dated April 2, 1990, is too harsh, unrealistic, and unreasonable and I requested the Tax

Court to consider declaring it unconstitutional, but the Tax Court mistook that I requested it to declare that Sec. 274(d) in the Internal Revenue Code to be unconstitutional and, thereby ignored my original request (as stated above).

2. Did the tax court incorrectly decide the facts? If so, what facts?

Yes, the Tax Court did not take my vigorous presentations or arguments, both in my brief, dated April 2, 1990, to the Tax Court and in my oral arguments in the trial on April 4, 1990. that

(1) Why did the IRS allow my claims for the deductions on the rents on my professional library in my income tax returns, 1967-1984 (when I rented an apartment from a landlord and also the depreciation on my professional library from May 1 to December 31, 1984, when I bought a house in Fayetteville in April 1984 and began to move into it on May 1, 1984), as stipulatied under point 9 in the Stipulation of Facts, agreed on between the IRS through its senior attorney, Mr. Frank Armstrong, and signed between him and me dated March 20, 1990, and submitted to the Tax Court by him in the trial on April 4, 1990; but disallow my claims for depreciation deductions on my professional library and the deductions on the utilities used in the library in my 1985 and 1986 income tax returns; and

(2) Why did the IRS allow my claims for the deductions on my car expenses, miscellaneous expenses, and travel expenses in my

1985 and 1986 income tax returns as stipulated under point 10 in the Stipulation of Facts mentioned above, but disallow my claims for the depreciation deductions on my professional library and the utilities used therein in the same income tax years, 1985 and 1986? I believe the car expenses and miscellaneous expenses (which, I recall from Enclosure 4 to Schedule C in my 1985 return and from Enclosure d to Schedule C in my 1986 return include: professional books, professional dues, registration fees, newspapers, editing and typing, entertainment, postage stamps, office equipment and supplies), which are very similar to, or on the same footing with, those items provided in Section 1.162-6 in the Income Tax Regulations which includes, inter alia, "the rent paid or accrued for office rooms, the cost of fuel, lights, water, telephone, etc. used in such offices" as stated and underlined under "b." on page 4 in my brief, dated April 2, 1990, to the Tax Court. In other words, why did the IRS allow the deductions on some items but disallow those on others provided in the same Regulation, namely Sec. 1.162-6 in the Income Tax Regulations.

Therefore, from the facts stated above, it is clear that the IRS did allow my claims for the deductions on my professional library and also the deductions on the utilities used therein in certain years' returns (1967-1984), but disallowed my claims for the same deductions in my 1985 and 1986 returns, and also that the IRS did allow my claims for

deductions on some items, namely; the car expenses, miscellaneous expenses as stated before, but disallowed other items, namely: the depreciation deductions on the professional library and the deductions on the utilities used therein (similar to "the rent paid or accrued for office rooms, the cost of the fuel, light, water, telephone, etc." provided in the same regulation, namely Sec. 1.162-6 in the same income tax 1985 and 1986 returns.) And I believe the above-mentioned facts did adequately illustrate and prove that the IRS' acts of allowance and disallowance were arbitrary and capricious; but I believe the Tax Court did not take these into consideration in its decision in this case and thereby to apply Sec. 706 of the Administrative Procedure Act as stated in my answer under "a." to question "1."

3. Do you think the tax court applied the wrong law? If so, what law did you want applied?

Yes, I believe that the Tax Court's application of Sec. 280A(c)(5) in the Internal Revenue Code to disallow my claims for the depreciation deduction of my professional library and for the deduction on the utilities used therein was wrong. Instead, the court should have applied the restrictions to, or exemptions from Sec. 280A(c)(5), in the Code, namely a paragraph under the subheading "Certain Property Placed in Service or Leased after June 18, 1984," as stated under 2, "My Answers

to the IRS Argument," and a. quoted on page 2 in my brief dated April 2, 1990, to the Tax Court.

In addition, the arbitrary and capricious acts performed by the IRS in my case as stated before leads me to ask the Court of Appeals to vacate the decision of the Tax Court and set aside the decisions of the IRS to disallow my claims for the depreciation deductions on my professional library, the deductions on the utilities used therein, and the reduction of my travel meals expenses in my 1985 and 1986 income tax returns according to Sec. 706 of the Administrative Procedures Act, stated before.

4. Do you feel that there are any other reasons why the tax court's judgment was wrong? If so, what?

Yes, I take the word "judgment" in a broader sense and answer the question below:

a. The inconsistency in logic in the Tax Court's decision in my case. I believe there is a question of "delegation of power" in "Constitutional Law," which means, in one sense, that legislative powers may be delegated by Congress to the Executive or Administrative officials of authority to make rules governing the affairs in their specific field. I assume and believe that publications made by the IRS to educate, instruct, or guide taxpayers in preparing their income tax returns must be based on this delegation of powers. In order to make sure about

this, I specifically wrote to Mr. Fred T. Goldberg, Jr., Commissioner of Internal Revenue, in a certified letter, dated July 23, 1990, and in the letter I specifically stated that the requests made in this letter were made in pursuance of The Freedom of Information Act of July 4, 1963, as amended on November 21, 1974, but I have not received an answer or reply from him to this date.

Coming back to my point, on the one hand, in upholding the decision of the IRS to reduce my travel meals expenses from my claims for $25.00 per day (out-of-state) and $17.50 per day (in-state) to $14.00 per day for both out-of-state and in-state trips, the Tax Court upholding the Regulation made by the IRS (as stated in a paper, a copy of which is enclosed as Appendix 4) given to me by Ms. Strickland, the IRS Auditor, at the time of auditing my 1985 and 1986 income tax returns and at my request) in which it is said, in part:

> Under Reg. 1.274-5(h), the IRS exercised its authority by setting standard daily meal allowances at $14.00 for travel requiring a stay of less than 30 days in one general locality where a taxpayer is pursuing a trade or business, and $9 for a stay of at least 30 days.

While, on the other hand, I believe, again, in upholding the IRS' decision to disallow my claims for the depreciation deductions on my professional library and also the deductions on the utilities used in the library, the Tax Court rejected my argument that Sec. 280A(c)(5), should

not apply to my case because of the restrictions or limitations contained in the paragraph under the subheading, "Certain Property Placed in Service or Leased after June 18, 1984-" quoted and argued under 2.a. on page 2 in my brief dated April 2, 1990, to the Tax Court.

b. The Tax Court mistook my request to it to declare that the regulation to allow taxpayers to deduct their business travel meal expenses for $14.00 per day both for out-of-state and in-state trips is too harsh, unrealistic, unreasonable, and therefore unconstitutional as a request to declare that Sec. 274 (d) in the Code to be unconstitutional, which I never did, either in my brief dated April 2, 1990, to the Tax Court or in my oral arguments in the trial on April 4, 1990.

c. The Credibility, Dependability, and Reliability of the IRS Publications. I take the word "judgment" in this question in a broader sense. I believe most Americans, and even their accountants or other helpers rely on the IRS publications to prepare their income tax returns. If the provisions (a whole paragraph, under "Certain Property Place in Service...," not a single word or phrase) clearly definitely stated in the official publications by IRS, such as: the IRS Publication 17 Your Federal Income Tax for individuals for use in preparing yearly income tax returns, and also in the IRS publication 534, Depreciation for use in preparing yearly income tax returns are not dependable and reliable, then what could the income tax accountants and also the average taxpayer do

in preparing income tax returns? In my casual survey, I have found that the paragraph, or I call it the restrictions to, or exemptions from, the limitations specified in Sec. 280A(c)(5), as mentioned above, had appeared in the IRS Publication 17, at least, for both 1984 and 1985; and it has appeared in the IRS Publication 534, Depreciation, year after year and revisions after revisions from 1984 through 1989 (with a change of one word, named to change from "certain" property to "Listed" property in the IRS Publication 534, Depreciation for 1988 and 1989). If we can't depend or rely on the provisions in this paragraph, quoted before, than what could an accountant or an average taxpayer do? And I believe there will be a crisis! And I also believe that the general purpose of the law is to maintain continuity and stability of the society.

d. The Blocking of Information by the Tax Court. I am 77 years old, and my hearing ability and recollection are not very good. In preparing a brief to the Court of Appeals, I need to check and cite the materials from the written transcript, for which I bought an official copy from "On the Record Reporting, Inc.," Austin, Texas, and have found from my recollection that there were mistakes, errors, omissions, and gaps... in the transcript. I have requested the Tax Court to send me a tape or to transmit the contents from the Official tape to the two blank tapes bought and sent to the Tax Court by me, without success. I believe to request the contents of a tape from the original tape to my tapes in

order to help me prepare a brief with accurate and correct information is legitimate and necessary. Needless to say, that the request is made in pursuance of The Freedom of Information Act of July 4, 1963, as Amended on November 21, 1974, but I do not feel that I have to say this in my request to a federal court.

5. What action do you want the Court to take in this case?

(1) To vacate the decision of the Tax Court entered on May 9, 1990, and, thereby, to set aside the decisions of the IRS (a) to disallow my claim for the depreciation deductions on my professional library and also for the deductions on the utilities used therein and (b) to reduce my claims for the travel meals allowance from $25.00 per day for out-of-state and $17.50 per day for in-state academic travel to $14.00 per day for both out-of-state and in-state academic travel meals.

(2) To assign the Court costs and my consultant's fees to the respondent.

6. If you think the Court should hear oral argument in this case, why do you think so?

Yes, because the Tax Court is a powerful federal court and the Internal Revenue Service is a powerful federal agency, I need much more time to state the facts and the law in this case adequately, clearly, succinctly, and

convincingly to the Court of Appeals in order to have the decision of the Tax Court vacated and set aside.

Respectfully Submitted,

Date: August 23, 1990

Min-chuan Ku

Appellant

Appendixes:

1. a copy of the paragraph "Certain Property Placed in Service or Leased after June 18, 1984," appeared on page 116 in the IRS Publication 17, Your Federal Income Tax, and also in the IRS Publication 534, Depreciation, "from 1984 through 1989."
2. Section 706 of the Administrative Procedure Act in three pages from The United States Code Service Lawyers Edition, 1989.
3. A copy of my brief dated April 2, 1990, and submitted to the Tax Court in the trial on April 3, 1990 (with a few changes to eliminate a few typographical errors which appeared in the original brief).
4. A copy of the regulation, Sec. 1.162-6 in the Income Tax Regulations (the original copy was sent to me by the Chief of the Technical Research and Assistance Section of the IRS).

5. A copy of the regulation by the IRS to set the standard daily meal allowances at $14...

A copy of this brief and all attachments has been sent in a first class with postage prepared mail to:

Abraham N. M. Shashy, Jr., Esquire

Internal Revenue Service

1111 Constitution Avenue NW

Washington, DC 20223

Date: August 23, 1990 Min-chuan Ku

Appendix E-8

E-8 A copy of the Commissioner's (or the Appellee's) Informal Brief (omitting all the appendixes) dated September 14, 1990 (or a reply to my informal brief).

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

90-2148 Ku v. Commissioner

25028-89

INFORMAL BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary. You need not limit your brief solely to this form but you should be certain that whatever you file answers the questions below. In any event, the court prefers short and direct statements.

1. Did the tax court fail to consider important grounds for relief. If so, what grounds?

   The Tax court considered the important ground for relief.

2. Did the tax court incorrectly decide the facts? If so, what facts?

   No. The parties stipulated to the facts.

3. Do you think the tax court applied the wrong law? If so, what law do you want applied?

   The Tax Court did not apply the wrong law. See attached memorandum.

4. Do you feel that there are any other reasons why the tax court's judgment was wrong? If so, what?

   The Tax Court's decision was correct. See attached memorandum.

5. What action do you want the Court to take in this case?

   The Tax Court's decision should be affirmed.

6. If you think the Court should hear oral argument in this case, why do you think so?

   Oral argument is not necessary in this case.

_____

Signature

NOTARY NOT REQUIRED

IMPORTANT: A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST BE SENT TO ALL PARTIES IN THE CASE. PLEASE LIST BELOW THE NAMES AND ADDRESSES OF THE PARTIES WHO WERE SENT A COPY OF YOUR BRIEF, TOGETHER WITH THE DATES ON WHICH THEY WERE SENT.

A copy of this informal brief, with attachments, was sent on September 14, 1990, to:

Mr. Min-chuan Ku
340 Loch Stone Court
Fayetteville, North Carolina

Appendix E-8

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

MIN-CHUAN KU,	)	
	)	
Appellant	)	
v.	)	No. 90-2148
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Appellee	)	

APPELLEE'S MEMORANDUM IN SUPPORT OF AFFIRMANCE

STATEMENT

Min-Chuan Ku (taxpayer), appearing pro se, appeals from the decision of the United States Tax Court determining a deficiency in his 1985 and 1986 federal income tax in the amounts of $1,182 and $879, respectfully. The Tax Court (Judge Carleton D. Powell) rendered its bench opinion on April 4, 1990. (App. B 19.)1/ Decision was entered on May 9, 1990. (Id. at 22.) Taxpayer timely filed a notice of appeal on July 26, 1990. (Id. at 23.) This Court has jurisdiction under Section 7482 of the Internal Revenue Code of 1986 (26 U.S.C.).

1/ "App. A" references are to the statutory appendix attached to this memorandum; "App. B" references are to the attached record appendix.

There are two issues on appeal. The first issue is whether the Tax Court, pursuant to Section 280(A) of the Internal Revenue Code[2/], properly disallowed taxpayer's claimed deductions for home office expenses where taxpayer received no gross income from the business he performed at his home. The second issue is whether the Tax Court properly disallowed taxpayer's deductions for travel expenses, to the extent those deductions exceeded the amount allowed by the Commissioner, where taxpayer failed to substantiate his expenditures, as required by Code Section 274(d).

The relevant facts, as stipulated by the parties or as otherwise found in the record, are as follows:

From 1965 to 1978, taxpayer was employed as a professor of political science at Pembroke State University. (Id. at 14, para. 3.) He retired from teaching in 1978 and is now Professor Emeritus of Political Science at the University. (Ibid.)

After his retirement, taxpayer became self-employed as a writer. In 1978 and 1979 taxpayer compiled and edited a two-volume work entitled A Comprehensive Handbook of the United Nations which was published by Simon and Schuster. (Ibid.) During 1985 and 1986, the years at issue, taxpayer continued to do research on national and

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2/ Section references are to the Internal Revenue Code of 1954 (26 U.S.C.), as in effect during the years at issue, unless otherwise noted.

international affairs. (Id. at para. 4.) Taxpayer's only revenues during those years, however, came from interest income, social security and medicare benefits, pension and medical benefits, and Internal Revenue Service tax refunds. (Ibid.)

Taxpayer does most of his research and writing at his home in Fayetteville, North Carolina. (Id. at 14-15, paras. 4 and 5.) Taxpayer has converted a large portion of his home into library space for this purpose. (Id. at 15, para 5.)

Some of taxpayer's research requires out-of-town travel. In 1985, taxpayer took one four-day trip to Washington, D.C., and one five-day trip to New York City. (Id. at para. 6.) In 1986 taxpayer made a five-day trip to Washington, D.C., a four-day trip to Atlanta, Georgia, and a two-day trip to Chapel Hill, North Carolina. (Ibid.) Taxpayer did not keep receipts or maintain any record of his expenditures for meals during these trips. (Id. at 16, para. 7.)

Taxpayer timely filed his federal income tax returns for 1985 and 1986, after extensions, and an amended return for 1985. (Id. at 13, para. 2.) He subsequently submitted to the Internal Revenue Service an amended return for 1986. (Id. at 16, para. 8.) On these returns, taxpayer claimed deductions for the depreciation of his professional library in his

home and other home office expense.[3/] In addition, on his 1985 return and on his 1986 amended return, taxpayer claimed deductions for out-of-town meals based upon estimated of $25 per day and $17.50 per day for his daily meals expense. (Ibid.)

After conducting an audit of taxpayer's 1985 and 1986 returns, the Commissioner of Internal Revenue determined deficiencies of $1,182 and $879, respectively. (Id. at 8.) The deficiencies resulted, in part, from the Commissioner's disallowance, pursuant to Section 280(A) of the Internal Revenue Code, of taxpayer's deductions from home office expenses in the amounts of $7,638.48 in 1985 and $4,935.82 in 1986. (Id. at 12.) The Commissioner also disallowed taxpayer's deductions for meal expenses to the extent those deductions exceeded $14 per day. (Id. at 16, para. 8.)

Taxpayer filed a petition in the United States Tax Court on October 16, 1989, seeking a redetermination of the deficiencies asserted by the Commissioner. (Id. at 5.) The parties filed a stipulation of facts (id. at 13), and on April 4, 1990, following a brief trial, the Tax Court entered its bench opinion upholding the Commissioner's deficiency determinations (id. at 19). In its opinion, the court noted that under

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3/ Taxpayer claimed similar deductions on his 1967 through 1984 returns. The Commissioner did not audit those previous returns and, as a result, no adjustments were made to those returns. (App. B 16 at para. 9.)

Section 280(A)(c) of the Code "deductions [for home office expenses] are limited to the gross income from the trade or business during the taxable years" and because "taxpayer received no gross income during either of the years in question, no deductions are allowable." (Id. at 20.) The court also stated that taxpayer had failed to substantiate his business travel expenses, as required by Code Section 274(d), and thus "no deductions for travel and entertainment are allowed in excess of those allowed by [the Commissioner.]." (Ibid.) Finally, the court declined to declare Code Sections 280(A) and 274(d) unconstitutional, as requested by taxpayer. (Ibid.)

This appeal followed. (Id. at 23.)

ARGUMENT

1. The Tax Court properly disallowed taxpayer's deductions for home office expenses under Section 280(A) of the Code because taxpayer received no gross income from the business he performed at home

Deductions are a matter of legislative grace. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934); see also Lull v. Commissioner, 602 F. 2d 1166, 1169 (4th Cir. 1979) ("Courts cannot allow the deduction unless Congress provides for it"); Koerner v. United States, 550 F. 2d 1362, 1363 (4th Cir. 1977), cert. denied, 434 U.S. 984 (1978) ("deductions from income for federal tax purposes exist only as

specifically authorized by statute"). The burden of proving entitlement to a deduction rests with the taxpayer. See, e.g., Colonial Savings Assoc. and Subsidiaries v. Commissioner, 854 F. 2d 1001, 1006 (7th Cir. 1988), cert. denied, 57 U.S.L.W. 3621 (Sup. Ct. March 20, 1989); Foster v. Commissioner, 756 F. 2d 1430, 1439 (9th Cir. 1985), cert. denied, 474 U.S. 1055 (1986).

In general, expenses incurred in a trade or business are deductible under Section 162 of the Internal Revenue Code, Appendix A, infra. This general rule of deductability is subject to certain restrictions, however, one of which is found in Code Section 280(A), Appendix A, infra. That section limits deductions with respect to the business use of a taxpayer's home. Section 280A(a) provides as a general rule that no deduction otherwise allowable under the Code shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence. As an exception to this general rule, Section 280A(c)(1) allows deductions relating to the business use of a taxpayer's residence if the conditions specified in that provision are satisfied. Section 280A(c)(5), however, imposes an overriding limitation on the amount of any deduction for home office expenses otherwise allowable under Section 28A(c)(1). Under Section 280A(c)(5), otherwise allowable deductions for the business use of a home are limited to the amount of gross income (less certain amounts not involved

here) derived from the business activity conducted in the home office. See Judisch v. United States, 755 F. 2d 823, 825 (11th Cir. 1985) (amount of home office deduction limited to the gross income derived from the use of the home office); Cousino v. Commissioner, 679 F. 2d 604, 605 (6th Cir. 1982), cert. denied, 459 U.S. 1038 (1983) (amount of home office deduction "limited to the extent that gross income derived from business exceeds the deductions which are allowable regardless of whether the home was used for business purposes").

In the case at bar, the Commissioner did not dispute that the expenses claimed by taxpayer with respect to his business use of a portion of his residence met the threshold requirements of Section 280A(c)(1). (App. B 14-15, paras. 3-5) Taxpayer, however, received no income from his research and writing activities during 1985 and 1986. Indeed, he stipulated that his only revenues during those years came from interest income, social security and medicare benefits, pension and medical benefits, and refunds of federal income tax. (Id. at 14, para. 4.) Accordingly, since Section 280(A)(c)(5) limited the allowable deductions for home office expenses to the amount of income produced by the taxpayer from his business activities at his home office and since taxpayer here had no such income, the Tax Court's disallowance of taxpayer's home office deductions obviously was correct. See Druker v. Commissioner, 697 F. 2d 46, 52 (2d Cir. 1982), cert. denied, 461 U.S.

957 (1983) (taxpayer who reported no income from his home office precluded under Section 280A(c)(5) from claiming any home office deductions); Cousino, supra (taxpayer who admitted he derived no income from the services he performed at home not entitled to a home office deduction); Gestrich v. Commissioner, 74 T.C. 525, 530 (1980), aff'd without published opinion, 681 F. 2d 805 (3d Cir. 1982) (taxpayer who earned no income from his trade or business of being an author not allowed office-in-home deduction); see also Judisch, supra, 755 F. 2d at 829.

Notwithstanding the clear mandate of Section 280A(c)(5) and the decisional law cited above, taxpayer contends (Br. 1) that he is entitled to claim depreciation on the portion of his residence that housed his professional library. As sole support for his position, taxpayer points to an IRS publication for taxpayers that sets forth the general rule that depreciation are allowable with respect to depreciable property used in a taxpayer's trade or business. This publication, however, does not address the limitations imposed by Section 280A on the deduction of expenses related to the taxpayer's use of a portion of his home for business purposes and certainly does not purport to allow deductions that Congress specifically has disallowed.

Moreover, even if the IRS publication could be construed in the manner espoused by taxpayer, there still would be no basis to disturb the

Tax Court's disallowance of taxpayer's depreciation deductions since the IRS has no authority to permit deductions that Congress has not seen fit to allow. Thus, the IRS publication that taxpayer relies upon cannot and does not effect Section 280A in any way. The sources of authoritative federal tax laws are statutes (e.g., provisions of the Internal Revenue Code) and treasury regulations promulgated thereunder, not informal publications of the IRS. See, e.g., Dixon v. United States, 381 U.S. 68, 72-73 (1965); Johnson v. Commissioner, 620 F. 2d 153 (7th Cir. 1980). As stated by the Seventh Circuit, "Treasury publications and pamphlets * * * do not bind the government. They are simply guides, and a taxpayer who relies on them generally does so at his own peril."4/ Gehl Co. v. Commissioner, 795 F. 2d 1324 (7th Cir. 1986). See also Virginia Education Fund v. Commissioner, 799 F. 2d 903, 904 (4th Cir. 1986); CWT Farms, Inc. v. Commissioner, 755 F. 2d 790 (11th Cir. 1985), cert. denied, 477 U.S. 903 (1986).

In order to prevail on the issue of home office deductions in the Tax Court, therefore, taxpayer had to show that he met the requirements of Section 280A(c)(5). Taxpayer could not do this, however, as he stipulated that he derived no income from the research and writing he

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4/ Reliance on an IRS publication that contains an erroneous statement of law might well provide grounds for a taxpayer to avoid imposition of a negligence penalty. In this case, however, no penalties were imposed against taxpayer.

conducted out of his home office during the years at issue. (Appl. B 14 at para. 4.) The Tax Court thus correctly upheld the Commissioner's disallowance of those deductions.5/

2. The Tax Court properly disallowed taxpayer's deductions for travel expenses, to the extent those deductions exceeded the amount allowed by the Commissioner, because taxpayer failed to substantiate those amounts, as required by Code Section 274(d)

Section 274 of the Code, Appendix A, infra, like Section 280(A), disallows certain deductions which would otherwise be allowable under Section 162. In particular, subsection (d) of Section 274 provides that no deduction shall be allowed for travel expenses, including meals, unless the taxpayer "substantiates by adequate records" the amount of such expenses.

Section 274(o) and Treasury Regulations on Income Tax, Section 1.274-5(h) (26 C.F.R.), authorize the Commissioner of Internal Revenue

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5/ That the Commissioner did not disallow similar home office deductions claimed by taxpayer in earlier years has no bearing on the propriety of the Commissioner's disallowance of the instant deductions. It appears that taxpayer did derive some income from his home office activities in some of these earlier years. At all events, it is well settled that the Commissioner's error in applying the law in one year does not preclude him from correcting that error in a later year. See, e.g., Dickman v. Commissioner, 465 U.S. 330, 342-343 (1984); Dixon v. United States, supra at 72.

to prescribe rules under which a taxpayer may elect to claim a specified amount for meals while traveling in lieu of substantiating the actual cost of meals. To that end, the Commissioner has promulgated Revenue Procedure 83-71, 1983-2 Cum. Bull. 590, which allows a taxpayer to claim a deduction in the amount of $14.00 per day for meals with respect to travel that requires a stay of less than 30 days, without the need to substantiate the actual cost of his meals. See Sly v. Commissioner, 58 T.C.M. (CCH) 1145, 1149 (1990); Kieffer v. Commissioner, 53 T.C.M. (CCH) 681, 682 (1987); Massey v. Commissioner, 47 T.C.M. (CCH) 1648, 1651 n.7 (1984); Weaver v. Commissioner, 49 T.C.M. (CCH) 249, 250 n.2 (1984).

In the instant case, taxpayer deducted $25.00 per day for his meals during out-of-town travel to Washington, D.C., New York City, and Atlanta, Georgia, during 1985 and 1986. (App. B 16 at para. 8.) He deducted $17.50 per day for his meals when he traveled to Chapel Hill, North Carolina, in 1986. (Ibid.) All of these trips were completed in less than 30 days and usually took between two and five days. (Id. at 15, para. 6.) Taxpayer maintained no receipts or other records substantiating the actual amount of his meal expenses. Pursuant to his authority under Rev. Proc. 83-71, the Commissioner allowed taxpayer a deduction for meals of $14 per day for each day of travel, notwithstanding taxpayer's

inability to provide any substantiation of the amounts he actually spent for meals. (Id. at 16, para. 8.)

The Tax Court correctly upheld the Commissioner's disallowance of taxpayer's deductions for meals to the extent those deductions exceeded $14 per day. As noted by the Court in its bench opinion (id. at 20), taxpayer failed to provide any substantiation for his meals expenses as required by Code Section 274(d). Indeed, taxpayer stipulated that he did not keep receipts or maintain any record of his expenditures for meals during his business travels. (Id. at 15, para. 7.) Accordingly, but for the Commissioner's decision in Rev. Proc. 83-71, supra (pursuant to Congress' grant of authority in Section 274(o)), to allow meal expenses of $14 per day without substantiation by the taxpayer, taxpayer here would be precluded under the terms of Section 274(d) from claiming any deduction for his meals. Thus, taxpayer's attack on Rev. Proc. 83-71 as "too harsh" (Br. 2) is misconceived, since in the absence of that ruling the Tax Court would have been compelled to disallow his meal deductions in their entirety. Finally, taxpayer's claim that the result in this case is unfair has a decidedly hollow ring, since it was his own failure to keep adequate records of his actual meal expenditures, as required by Section 274(d), that caused the disallowance of his deductions.

CONCLUSION

For the reasons stated above, the decision of the Tax Court should be affirmed.

Respectfully submitted,

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SEPTEMBER 1990

E-9 A copy of my supplementary informal brief (omitting all the appendixes), dated October 19, 1990 (as a reply to, and comment on, the Commissioner's informal brief) also requesting the Court of Appeals to vacate the Decision of the United States Tax Court, entered May 9, 1990

United States Court of Appeals
for the Fourth Circuit

Min-chuan Ku Appellant	)	
v.	)	No. 90-2148
Commissioner of Internal Revenue Appellee	)	

Appellant's Supplemental Informal Brief (or his reply to Appellee's Informal Brief)

This brief is divided into the following six parts:

I. The Preface - The handling of this case procedurally by the Tax Court

II. The argument

III. The Comments on the appellee's informal brief

IV. The legal authorities cited in this brief

V. The request to the Court of Appeals

VI. The appendixes

Appendix E-9

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B. The Answering to my Request for a Copy of a Tape from the Original Electronic Tape, Taped in the Hearing of the Trial, to help preparing My Informal Brief to the Court of Appeals and also for Other use later.

II. The Argument - The contrasts between the allegations and assertions in the appellee's brief and my specific positions listed below.

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B. The Bases on Which I Claim for the Deduction on My Professional Library.

1. My Positions in My Petition, dated October 10, 1989, to the Tax Court.

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(2) Idle assets

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2. My positions in my brief, dated April 2, 1990, to the Tax Court.

a. The "restricting paragraph" (defined in II.A. before) in the IRS Publications 17 and 534, stated in this brief to restrict the application of Section 280A (c) (5) in The Internal Revenue Code of 1986 (as amended). not to my case

b. The arbitrary and capricious acts of IRS obliging the reviewing court to apply Section 706 of The Administrative Procedure Act.

(1) Argument may be advanced that the approval of my earlier years' claims for the deduction, which might be because my earlier years' academic income large enough to cover the deductions claimed and approved,

which is not always true.

(2) Argument may also be raised that the respondent did not call the petitioner in, to audit his income tax returns, but auditing was done vigorously by correspondence, and I have all the correspondence with IRS to prove it.

3. My Positions in My Informal Brief, dated August 23, 1990, to the Court of Appeals.

a. The Theory and practice of the "delegation of powers" in "Constitutional Law"

(1) The theory of the "delegation of powers"

(2) The Practice of the "delegation of powers" in the United States

(3) "Delegation of powers" by the Congress generally and directly to the Secretary of the Treasury and generally and indirectly to the Commissioner of the Internal Revenue (through the Secretary of the Treasury) derived from the Internal Revenue Code of 1986 (as amended).

(a) Section 7801(a)

(b) Section 7802(a)

(c) Section 7805(a)

(d) Section 7805(c)

(A copy of each of them is enclosed as Appendixes B-7, B-8 and B-9).

(4) "Delegation of powers" by the Congress generally and indirectly (through the Secretary) to the Commissioner of Internal Revenue (the excerpts of which is derived from The Regulations on Procedure and Administration)

301.7805-1

(a) Rules and Regulations

(b) Retroactivity

(c) Preparation and distribution of regulations, forms, stamps, and other matters

(a copy of each of them is enclosed as Appendix B-7 - B-10)

b. The arbitrary and capricious acts of IRS and the application of Section 706 of The Administrative Procedure Act by the reviewing court.

C. The Bases on Which I Appeal for the Restoring of My Claims for My Academic Travel Meals Expenses

1. The unconstitutionality of the IRS rule (which was given effect by Revenue Procedure 83-71 at .421 (mentioned in my brief to the Tax Court) or as the appellee's brief put it (p. 9) "...promulgated by the Commissioner in Revenue Procedure 83-71, 183-2 Cum. Bull. 590" to set up the amount of $14 per day for meals with respect to travel that requires a stay of less than 30 days, without the need to substantiate the actual cost of his meals" because of its unreasonableness.

2. The decision of the Tax Court as well as the appellee's informal brief mistook my request to the Tax Court to declare the above-mentioned regulation to be unconstitutional as my request to the Court to declare that Sections 280A and 274 (d) in the

Code to be unconstitutional, which was far from the truth.

3. The normal judicial functions and procedure in this regard.
4. My argument on this point stated under "III. 2." which is the five elements, a. b. c. d. & e. stated on pages 5-6 in my brief, dated April 2, 1990, to the Tax Court, plus the established principle in international law, "ex aequo et bono" which is appended in this petition as Appendix E-4-2.

III. The Comments on the Appellee's Informal Brief

A. The General Comments on the following:

a. "The [Tax] Court declined to declare Code Sections 280(A) and 274(d) unconstitutional, as requested by taxpayer" (p. 4)

b. "The sole support" (p. 7)

c. "The sources of authoritative federal tax law are statute" (p. 7)

d. "The informal publication of IRS" (p. 8).

e. "The Treasury publications and pamphlets...do not bind the government" (p. 8)

f. "That the Commissioner did not allow similar home office deductions claimed by taxpayer in earlier years has no bearing on the propriety in the Commissioner's disallowance of the instant deductions" (footnote 5, p. 8)

g. "The Commissioner's error in applying the law in one year does not preclude him from correcting the error in a latter year." (footnote 5, p. 8)

B. The overriding comments

IV. The Legal Authorities Cited in This Brief

V. The Requests to the Court of Appeals

1. To vacate the decisions of the Tax Court, entered May 9, 1990
2. To set aside the decisions of the IRS to disallow my claims
3. To restore my claims for the travel meals expenses
4. To award me the legal fees

VI. The Appendixes

Appendix E-9

I THE PREFACE

The Handling of My Case and also the Answering to My Request for Information (or a copy of a tape from the original electronic tape, taped in the hearing of the Trial) by the Tax Court.

In reply to the Appellee's informal brief and at this outset, I believe to say a few words about the transmitting of all the records (or documents) and the answering to my two requests for a copy of a tape from the original electronic tape, taped in the hearing of the trial, for preparing my informal brief and also for later use in this case by the Tax Court would be in order if I am permitted to do so.

A. The Transmitting of All the Records (or Documents) by the Tax Court to the Court of Appeals.

I recall from reading paragraph 2 under point 1 in the Court of Appeals "Order to Proceed on Informal Brief," which says:

> The Court will review the entire record on appeal for possible meritorious issues; it will not limit its review solely to the issues raised in the parties' briefs.

But glancing over the list of the documents sent to the Court of Appeals by the Tax Court on August 29, 1990, I could not and did not find even a copy of my "brief," dated April 2, 1990, to the Tax Court listed therein,

which, I believe, is the most important document and contains the most important and the most cogent arguments in this case I presented to the Tax Court. In this connection, I also did not see my "appeal" under the subject, "Submitting Reasons, Facts, and Documents concerning Disputed Issues in My Income Tax Returns of 1985 and 1986, dated June 18, 1988." Under the covering letter with the subject, "Submitting an Appeal with Enclosures," dated July 11, 1988, to the Appeals Officer through Ms. Strickland, the IRS Auditor, as required by IRS. Although I did see a "petition," but without any specification after it, as to whether it was mine, on what date, and to what court, which prompted me to write a letter, dated September 4, 1990, to the Tax Court (a copy of which is enclosed as Appendix A-1), and received a reply dated September 14, 1990, from Ms. Lynne L. Glasser, Deputy Clerk of the Court, from which I conjecture that my "appeal," dated June 18, 1988, was lost somewhere; either IRS did not sent it to the Tax Court, or the Tax Court did not ask IRS to send all related documents concerning this case to the Tax Court before the trial date for its review and consideration, and my "brief" to the Tax Court was sent to the Court of Appeals only after my request, dated September 4, 1990, and I am not too sure if Ms. Glasser sent the nine exhibits enclosed in the brief.

B. <u>The Answers to My Requests for a Copy of a Tape from the Original Electronic Tape, Taped in the Hearing of the Trial, to</u>

help prepare my informal brief to the Court of Appeals and also for Other uses Later.

Again, after reading and reviewing the official transcript, which I ordered from, and paid for to "On the Record Reporting, Inc., Austin, Texas 98731, I discovered some discrepancies, gaps, or omissions therein and wrote to the Tax Court, dated June 28, 1990, to ask for a copy of the typewritten transcript and also a copy of the original electronic tape from which the official transcript was made so that I might check them against the transcript from the "On Record Reporting Inc.," or vice versa so as to enable me to prepare an informal brief to the Court of Appeals with assurance and confidence. But this request was rejected by the Tax Court, through a letter dated July 11, 1990, from Ms. Lynne L. Glasser, Deputy Clerk of the Court (a copy of which is enclosed as Appendix A-4) that,

> Although the transcripts are verbatim transcriptions of the tapes, if you believe there are transcriptions errors, you may file a "Motion to correct Transcript" in which you specify each error or omission you believe reflected in the transcript and the correction you believe appropriate. Thereafter you may request permission to listen to the tapes, and it is up the the Judge whether or not the alleged transcription errors warrant such and, if appropriate, the Judge would then prescribe the location and conditions under which the tapes could be heard.

Following this, I sent a second letter, dated July 31, 1990, to the Tax Court through Ms. Lynne L. Glasser, Deputy Clerk of the Court, to further my request by saying in the second paragraph of that letter

> Permit me to say, I am 77 years old with poor sight, poor hearing without a hearing aid, do not know or am not sure as to how to operate or use a tape recorder. If I use it, I might erase the whole recording by mistake. And what I said about the contents of the written transcript from "On the Record Reporting, Inc." was from my impression or recollection of what happened in the Hearing before the U.S. Tax Court, on April 4, 1990, and I need the original electronic tape to listen to, compare with, and check against the written transcript from "On the Record Reporting, Inc." which, I believe would be better done in a quiet study room in my home and may be with some electronic helper, and which could hardly be done in Washington, D.C. during a short period. Would you be kind enough to convey these practical difficulties to the U.S. Tax Court for me and ask it to comply with my previous and this requests by transmitting the Court hearing from the original verbal recording made by Anita K. Benson to the two [blank] tapes (enclosed) made by "Sony" which, I believe, will suit my Sony Recorder nicely. The tapes will last for two hours and are enclosed in this letter. If you need more, please let me know it, and I will send [them] to you as soon as possible.

Again, in a one paragraph reply to the above request from Ms. Lynne L. Glasser, Deputy Clerk of the Tax Court, and for the Tax Court, dated August 14, 1990 (a copy of which is enclosed as Appendix A-6), which says:

> The two blank tapes received with your letter dated July 31, 1990, are returned herewith. As I explained before, if you believe there are errors in the verbatim written transcript, you must file a motion to correct transcripts in which you set forth each error you believe was made. It is then up the the Judge to decide whether or not it is necessary for anyone to listen to the transcript tapes.

II. THE ARGUMENT

The contrast between the allegations and assertions in the appellee's informal brief and my specific positions listed below.

A. The Defining and Classifying of the Disputed Issues

I believe the disputed issues in this case strictly speaking are three, namely: the disallowance of my claims for (1) the "depreciation deductions" on my professional library, (2) the disallowance of my claims for the "deduction" on the utilities used in the library, and (3) the "reduction" of the travel meals expenses claimed; but for the sake of discussion and also for the clarity of the issues in the discussion, the first two issues may be grouped into one, namely: the disallowance of the claims for the deduction on the professional library, which becomes the first issue and the second issue may simply be stated as the reduction of the travel meal expenses, both of these will be discussed accordingly and separately below:

B. The Bases on which I claim for the Deduction on my professional library.

In the later part in paragraph 2, on page 7 of the appellee's informal brief, dated September 14, 1990, it is said:

> As sole support for his position, the taxpayer points to an IRS publication for taxpayers that set forth the general rule that depreciation deductions are allowable with respect to depreciable property used in a taxpayer's trade or business. This publication, however, does not address the limitations imposed by Section 280A on the deduction of expenses related to the taxpayer's use of a portion of his home for business purposes and certainly does not purport to allow deductions that Congress specifically has disallowed.

which would seem to be the central point of the allegations in the appellee's brief to characterize my position as emptiness. However, in perusing the above, I failed to see, or it did not mention in what paper, or petition, or document, at what time, to what court, and to what specific IRS publication, I pointed to as my sole support, despite the fact that the appellee's informal brief does have quite a few footnotes, but unfortunately there are none with this passage. Therefore, I do not know how to disagree with this assertion, which appears to be without factual bases (Please see my positions stated in my petition, dated October 10, 1989, my brief, dated April 2, 1990, to the Tax Court, and my informal brief, dated August 23, 1990, to the Court of Appeals which are briefly

restated below); otherwise, there is no focal point for discussion or debate.

In this connection, may I briefly restate my positions on this point (the deduction on my professional library) in my petition dated October 10, 1989, my brief, dated April 2, 1990, to the Tax Court, and my informal brief, dated August 23, 1990, to the Court of Appeals as follows to clear the situation:

1. My positions on my claims for the deduction on my professional library in my petition, dated October 10, 1989, to the Tax Court

> (1) Professional Libraries. If you maintain a library that you use in your profession, you may depreciate the library if its value decreases with time. You may deduct the cost of technical books, journals, and information services used in your business that have a useful life of one year or less
>
> (quoted from paragraph 10, in column 2, on page 2 in the 1986 IRS Publication, Depreciation, 1986) (a copy of which is enclosed in Appendix B-1)
>
> (2) Idle assets. You must claim a deduction for depreciation on an idle asset if it is usually used in your business but is temporarily idle. For example, there is a temporary lack of a market for the product produced with that asset. The asset is still treated as being used in your business for federal income tax purposes. (The underlinings are mine)

and this is quoted from Ibid, in paragraph 11, column 2, on page 2 (A copy of this is enclosed as Appendix B-2). I believe my professional library fits this item very well because I have compiled and edited a book, A Comprehensive Handbook of the United Nations, published by Simon and Schuster in two volumes, in 1978 and 1979. The publisher valued the book very highly and priced it at $85.00 a set in 1977, which was extremely high and against my wishes and vigorous advice. I repeatedly suggested to publish the book in one volume and priced in the range of $15.00 to $25.00 a set to no avail. The publisher advertised the book to all prominent universities, colleges, and public libraries in the major nations of the world without expected success. Then the publisher stopped publishing the second, third, ... editions of it, which is the present status of the book. If I have time to contact other publishers or university printing offices, I may have the book well updated and published a second, third,... edition and in a larger scale. Should that be so, then there will be no problem for my claims for the deduction on my professional library.

(3) Professional expenses. As stated under "Professional expenses" in Regulation 1.162-6 in The Income Tax Regulations, which says:

> A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid or incurred in the operation and repair of an automobile used in making professional calls, dues to professional journals, the rent paid or accrued for office rooms, the cost of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amount currently paid or accrued for books, furniture, and professional instruments and equipment, the useful life of which is short, may be deducted. [Reg. 1.162-6.] (A copy of which is enclosed as Appendix B-3)

(4) In Section 15322, "Idle periods," under (d) "Idle property" on page 15019, in Prentice Hall: Federal Tax Guide, 1989, First Edition, Volume I, (A copy of which is enclosed as Appendix B-4) which says:

> Property is depreciable during intermittent periods when idle but ready for use. (P. Doughter Co. v. Comm., 152 F2d 269, 35 AFTR 669 cert den.)

(5) §16335, on page 15021, Ibid, says:

> "Requirement that property be used in business or held for the production of income." Depreciation allowed on property held for income though no income was produced RewRul 55-579, 1955-2 - CB 47...

(6) The firm precedents of eighteen (18) years (1967-1984)

Further, I recall that IRS had approved (or not disallowed) my claims for the deduction on my professional library and the utilities used therein for eighteen years (1967-1984) without any inquiry, interruption, or disallowance, but all of a sudden, IRS disallowed my claims for the depreciation deduction on my professional library and the deduction on the utilities used therein in my 1986 income tax return, and later when I amended my 1985 income tax return by adding the car expenses used in 1985, IRS also disallowed my claims for the deduction on my professional library and the deduction on the utilities used therein in my 1985 tax return.

(7) In this connection, I tried to rationalize the IRS's arbitrary and capricious acts of allowance and disallowance of my claims for deductions on my professional library in the past twenty years (1967-1986) allowance for my income tax returns 1967-1984; and disallowance for my income tax returns, 1985-1986 by offering them the explanation under "b." in the second

paragraph, on page "3", in my brief, dated April 2, 1990, to the Tax Court, namely:

> To prove the validity of this point, I claimed for the deduction on the "rent" on my professional library when I rented an apartment from others, year after year, for the past eighteen years (1967-1984) from IRS. That being so, I believe not because I had a friend at the Chase Manhattan, whom I did not, but because I have learned from the daily news (radio, TV, and newspapers) that there was a mass resignation of staff members from IRS in the early 1980's. And as a result, IRS has lost so many pros or old hands in staff members, who knew what they were doing, and who knew not only the conspicuous rules and regulations, such as Section 280A(c) (5) quoted before, but also the obscure exceptions, such as in the statements under the subheading, "Certain Property Placed in Service or Leased after June 18, 1984, - contained both in the IRS Publications numbered 17 and 534 also quoted before; and I also believe that the obscure exemptions are as important as, if not more important than, the conspicuous rules and regulations in the administering of the income tax laws (in Code), rules, regulations, and procedures, and above all, also in the pursuit of justice.

From the appellee's reply informal brief, it would seem that the above offered explanation was not noticed or answered by the appellee's informal brief.

2. <u>My positions in my brief, dated April 2, 1990, to the Tax Court</u>.

   a. The "restricting paragraph" (defined, quoted, and discussed below).

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I am not in the income tax business and have to dig into the income tax laws, rules, regulations, and procedures in order to prepare a cogent brief to the Tax Court. After the digging and preparation is done, I believe I first stated the IRS's position in law to disallow my claims for the deduction on my professional library in Section 280A(c) (5) on page 1 in my brief, and then I stated my disagreement with the IRS's basis under "2.a." in my brief, namely:

> 2. My answers to the IRS argument
>
> a. My answer to the IRS argument is based on the statements stated under the subheading, "Certain Property Placed in Service or Leased after June 18, 1984" in the IRS Publication 17, (rev. Nov. 85), entitled, Your Federal Income Tax, For Individuals For Preparing 1985 Returns, in paragraph 4, column 1, on page 115 (a copy of which is enclosed as Appendix B-5), which says:
>
> Certain PROPERTY PLACED IN SERVICE OR LEASED AFTER June 18, 1984 - There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and "certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not used predominantly (more than 50% in a qualified business use during any tax year...."

I believe this paragraph, especially the latter part of it, which is underlined by me, is the core of my argument, which I believe, is to restrict the application of Section 280A(c) (5) of The Internal Revenue Code of 1986 as Amended, (mentioned before in this brief and quoted in my brief, dated April 2, 1990, to the Tax Court) and I would call this

paragraph the "restricting paragraph" because it is to restrict the application of Section 280A(c) (5) of The Internal Revenue Code to the cases like mine, which will be expounded later. Heretoafter, it will be referred to as "the restricting paragraph" in this brief for the sake of briefness and clarity of discussion.

I recall having stated and quoted this paragraph in paragraph 3, on page 2 in my brief, dated April 2, 1990, to the Tax Court, to follow this in the next paragraph and in the same brief.

> Similar quotation [as quoted above] may be found in the IRS Publication 534 (Rev. Dec. 86) Depreciation (for use in preparing 1986 returns) in column 3, on page 1 (a copy of which is enclosed as Exhibit 3).

Again, in the last paragraph on page 2 of that brief, I stated:

> Firstly, I assume and believe that (a) that "Certain Other Property"....stated in the above quotation refers to, or at least includes, the "professional library in my home" and (b) the "limits" in the above quotation refers to, or at least includes, the limitations in Sections 280A(c) (5), quoted before. Should this be true, then my answers to the IRS argument stated before are twofold: Firstly, my professional library has placed in service beginning on May 1, 1984, and not after June 18, 1984; and secondly, my professional library is used predominantly (more than 50%) in a qualified business and not not used predominantly in a qualified business in any tax year. Therefore, the limitation on deduction in Section 280A(c) (5) in the Code should not be applied to my claims for the depreciation deductions on my professional library in my income tax returns of 1985 and

> 1986, the years' returns which are in question is clear and obvious.

I also recall having stated in the latter part of paragraph 4, on page 5, in my informal brief to the Court of Appeals that:

> In my casual survey, I have found that the paragraph [the "restricting paragraph" quoted above], or as I call it the restrictions to, or exemptions from, the limitations specified in Section 280A(c) (5) as mentioned above, had appeared in the IRS Publications 17, at least for both 1984 and 1985; and it has appeared in the IRS Publication 534, Depreciation, year after year and revisions after revisions from 1984 through 1989 (with a change of one word, namely from "certain" property to "Listed" property in the IRS Publication 534, Depreciation, for 1988 and 1989).

If we can't depend or rely on the provisions in this paragraph quoted before, then what could an accountant or an average taxpayer do? And I believe there will be a crisis! And I also believe that the general purpose of the law is to maintain continuity and stability of the society.

Below is a list with a brief and detailed description of this paragraph (the "restricting paragraph"), which appeared in the IRS publications, which I have on my desk (with a specific number for the paragraph, column, and page, after each publication).

A list of the IRS Publications which have the "restricting paragraph" as the basis for my claims.

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1. 1984 IRS Publication 17 (Rev. Dec. 84) Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Return (appeared in paragraph 4, column 1 on page 116).
2. 1985 IRS Publication 17 (Rev. No. 85) Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Return (appeared in paragraph 4, column 1 on page 115).
3. 1984 IRS Publication 534 (Rev. Dec. 84) Depreciation (appeared in paragraph 5, column 3, on page 1).
4. 1985 IRS Publication 534 (Rev. Dec. 85) Depreciation (appeared in paragraph 7, column 3, on page 1).
5. 1986 IRS Publication 534 (Rev. Dec. 86) Depreciation (appeared in paragraph 8, column 3, on page 1).
6. 1987 IRS Publication 534 (Rev. Dec. 87) Depreciation (appeared in paragraph 4, column 1, on a page 2).
7. 1988 IRS Publication 534 (Rev. Nov. 88) Depreciation (appeared in paragraph 8, column 1, on page 3).
8. 1989 IRS Publication 534 (.....) Depreciation (appeared in paragraph 5, column 3, on page 3 - only to change one word, from "Certain" property to "Listed" property both in this and the IRS Publication, Depreciation, 1988.

b. The arbitrary and capricious acts done and manifested by the IRS in its allowance and disallowance of my claims for the deductions on my professional library.

With regard to my argument of the disallowance on my professional library, namely: that the IRS handled my income tax returns arbitrarily and capriciously, to wit: it allowed my claims for the rent on my professional library and the utilities used therein for eighteen years (1967-1984) without any inquiry, interruption, or disallowance; and also it allowed quite a few items for my professional expenses, for instance: it also approved my claims for the deductions for the car expenses of $1,975.44 for 1985 and $1256.80 for 1986; miscelleanous expenses of $789.35 for 1985 and $783.25 for 1986; and travel expenses of $616.13 for 1985 and $588.87 for 1986. A total of these three items is $3380.92 for 1985 and $2628.92 for 1986. All of these items and expenses were listed under Point 10 in the Stipulation of Facts, signed by me, on March 15 and by Mr. Frank Armstrong, Jr., Senior Attorney for the IRS on March 20, 1990, respectively, but disallowed my claims for the depreciation deduction on my professional library and the deductions on the utilities used therein; both of them are included in the same regulation, namely: Regulation 1.162-6 "Professional expenses" of the Income Tax Regulation, which was stated in my brief, dated April 2, 1990, to the Tax Court and also in my informal brief, dated August 23,

1990, to the Court of Appeals, which would seem to have been completely ignored by the appellee's informal brief, dated September 14, 1990.

(1) Argument may be advanced as the appellee's informal brief did in the second sentence in footnote 5, on page 8, that

> It appears that taxpayer did derive some income from his home office activities in some of these earlier years,

which might imply that in some of these earlier years I would receive more academic income than the deductions claims and approved (or not disapproved by the IRS), which was not always true.

In this connection, below is a copy of the table from my casual survey listing all the royalties I have received from the publication of my book and also the professional expenses I claimed and approved (or not disapproved by IRS) in my income tax returns after my retirement in 1978, namely: from 1979 to 1986 to show that those approved expenses in 1979-1981 were not covered by the royalties received, and during 1982-1984, I did not receive any academic (teach and research) income at all, but my professional expenses were all approved by the IRS, but disallowed during 1985 and 1986, the years' returns in question, which may well dispel the doubt by the IRS and clear the situations in my income tax returns during the past eight (8) years (1979-1986).

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The Year	Royalty Received	Business (academic & research connected expenses) reported and approved by the IRS
1979	2299.56	6035.68
1980	1832.16	7211.22
1981	1939.83	8603.59
1982	"0"	8163.31
1983	"0"	8455.13
1984	"0"	11,030.24
1985	"0"	9337.56 - 1182.00 of which was disallowed
1986	"0"	7564.74 - 879.00 of which was disallowed

The above mentioned royalties and business connected expenses were from my income tax returns, 1979-1986, and the figures of disallowances were from the IRS Notice of Deficiency, dated July 21, 1989. They are made in a casual survey from my income tax returns and they are subject to the IRS checking.

(2) Argument may also be made that the respondent did not call the petitioner in, to audit his income tax returns in these years as insisted by Mr. Frank Armstrong, Senior Attorney for the IRS under Point 10 in the Stipulation of Facts and signed by Mr. Armstrong and me, which might indicate that the respondent might not audit my returns

for these years carefully, and vigorously, which is not true; but on the contrary, I believe the IRS Auditing Office audited my income tax returns through correspondence carefully, thoroughly, meticulously and even over zealously. I have all the correspondence with the IRS on their auditing or examining of my income tax returns for at least three years, 1982-1984 (the immediate three years before 1985 and 1986, the years' returns which are in question) ready to be submitted to the Court of Appeals for review and consideration.

3. My Positions in My Informal Brief, Dated August 23, 1990, Expended in this Supplementary Informal Brief to the Court of Appeals for the Fourth Circuit

   a. The theory and practice of the "delegation of powers" in "Constitutional Law."

As stated before, the core of my argument is based on the "restricting paragraph" (mentioned before) whose bases in at least eight different IRS publications are specifically cited before, and the legal bases and effectiveness of it in income tax laws is in the question of "delegation of power" in "Constitutional Law," about which I have stated in the latter part in my answer to the first question, on page 2 in my informal brief, namely:

> [I based my claims for the deduction on my professional library on the "restricting paragraph" (defined and mentioned before), which] I believe, is made

> by the IRS through the power or authority delegated to the IRS, whether generally or specifically, directly or indirectly (through the Secretary of the Treasury) from the Congress, and which, I believe, was made to interpret, carry out, execute, implement, or even supplement (modify or replace) the laws enacted by Congress if it is made after the laws enacted by the Congress.

I believe there is a question of "delegation of power" in Constitutional Law," which means, in one sense, that the legislative powers may be delegated by Congress to the executive or administrative officials of authority to make rules governing the affairs in their specific fields, I assume and believe that publications made by the IRS to educate, instruct, or guide taxpayers in preparing their income must be based on this "delegation of powers."

(1) The theory of the "delegation of powers" in "Constitutional Law". To trace this point in theory and practice in "Constitutional Law", I have found under the heading "Functions which may be delegated" and the subheading, "Power to supplement statutory provisions,"

> Yielding to "Common sense and the inherent necessities of governmental co-ordination" the [U.S. Supreme] Court has sustained numerous statutes granting in the total vast powers to administrative or executive agencies. Two different theories, both enunciated during the Chief Justiceship of John Marshall, have been utilized to justify these results. First in importance is the theory that another department may be empowered to "fill up the details" of a statute. The second is that Congress may legislate contingently, leaving to others the task of

ascertaining the facts which bring the declared policy into operation.[1]

(2) the Practice of "delegation of powers" in the United States

And in practice, in 1987, [the U.S. Supreme] Court sustained the authority granted to the Commissioner of Internal Revenue to designate the "marks, brand and stamps" to be fixed to packages of oleomargarine[2]. Soon after, it upheld an act which directed the Secretary of Treasury to promulgate minimum standards of quality and purity for tea imported into the United States[3]. And later it has approved the delegation to executive or administrative officials of authority to make rules governing the different affairs in their specific fields in many cases[4].

(3) The "delegation of powers" by the Congress generally and directly to the Secretary of the Treasury and generally and indirectly to the Commissioner of the Internal Revenue from the Internal Revenue Code of 1986 (as amended).

---

[1] The Constitution of the United States of America - Analysis and Interpretation (Annotation of cases decided by the Supreme Court of the United States to June 22, 1964) Prepared by the Legislative Reference Service, Library of Congress, ..1964 Edition, U.S. Government Printing Office, Washington, 1964, p. 96

[2] Ibid., p. 98

[3] Ibid., p. 96

[4] Ibid., p. 98-99

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To trace the delegation of powers further, regarding the application of the "delegation of powers" in the internal revenue matters in the United States, below are the excerpts from the Internal Revenue Code of 1986 (as amended).

Sec. 7801. Authority of The Department of the Treasury

[Sec. 7801(a)]

(a) Powers and Duties of Secretary - Except as otherwise expressed by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

[Sec. 7802(a)]

(a) Commissioner of Internal Revenue - There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury.

Sec. 7805 Rules and Regulations

[Sec. 7805 (a)]

(a) Authorization - Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (emphasis added).

[Sec. 7805(c)]

(c) Preparation and Distribution of Regulations, Forms, Stamps, and Other Matters - The Secretary shall prepare and distribute all the instructions, regulations, directions, forms blanks, stamps, and other

matters pertaining to the assessment and collection of internal revenue. (emphasis added)

(4) The "delegation of powers" by the Congress generally and indirectly to the Commissioner of Internal Revenue from the Regulations on Procedure and Administration.

§ 301.7805-1 Rules and Regulations.

(a) Issuance. The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (emphasis added)

(b) Retroactivity. The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect. (emphasis added)

(c) Preparation and distribution of regulations, form, stamps, and other matters - The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to assessment and collections of internal revenue. (emphasis added)

Therefore, under Section 301.7805-1 (c) quoted above, the Commissioner, under the direction of the Secretary, does have the power to prepare and distribute all the instructions, regulations, directions, forms, blanks stamps, and other matters pertaining to assessment and

collection of internal revenue, and under Section 301.7805-1 - Rules and Regulations, (a) - Issuance, also quoted above, the Commissioner, with the approval of the Secretary, does (or shall) have the power to prescribe all needful rules and regulations (which, I believe, include yearly important IRS publication 17, Your Federal Income Tax.... and another important IRS publication 534, Depreciation) for the enforcement of the Code...including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (emphasis added)

NOTE: A copy of the texts of each of the above mentioned Sections, 7801(a), 7802(a), 7805(a) in the Code of 1986 and Section 301.7805-1 (a) (b) (c) in the Regulation on Procedure and Administration were appended to my supplementary informal brief, dated Oct. 19, 1990, to the Court of Appeals as Appendixes B-7 to B-10.

b. The arbitrary and capricious acts of IRS and the application of Section 706 of the Administration Procedure Act by the reviewing Court. Please see my full explanation on this point under "a." in my answer to question "1" on page 1 and 2 in my informal brief, dated August 23, 1990, to the Court of Appeals.

C. The basis on which I appeal for the restoring of my claims for my academic travel meals expenses.

1. The unconstitutionality of the IRS rule (which was given effect by Revenue Procedure 83-71 at .421 or as the appellee's informal brief put it (on page 9) "... promulgated by the Commissioner in Revenue Procedure 83-71, 183-2 Cum. Bull. 590) to set up the amount of $14. per day for meals with respect to travel that requires a stay of less than 30 days, without the need to substantiate the actual cost of his meals" because of its unreasonableness. The legal authorities or case laws on this point are put under item "18.e." in "IV the Legal Authorities Cited in this Brief."
2. The decision of the Tax Court entered on May 9, 1990, as well as the appellee's informal brief, dated September 14, 1990, mistook my request to the Tax Court to declare the above-stated regulation to be unconstitutional as my request to the Tax Court to declare that Sections 280A and 274(d) in the Code to be unconstitutional, which was far from the truth; and I never made this request, either in my brief, dated April 2, 1990, to the Tax Court, or in my oral argument in the trial on April 4, 1990, in the Tax Court, both of which could be reviewed by the Court of Appeals right away.) especially with regard to the appellee's informal brief, which made this allegation after I vigorously denied it in my answer under

"b." to question "4" posted by the Court of Appeals in my informal brief, dated August 23, 1990 to the Court of Appeals (a copy of which was sent to both Mr. Abraham N. M. Shashy, Jr., Chief Counsel for the IRS on August 23, 1990, and Mr. Gary R. Allen, Chief, Appellate Section, Tax Division, The Department of Justice, Lead Counsel for the appellee, on September 5, 1990.

It is unusual that after this positive denial of the allegation in my informal brief, dated August 23, 1990, the appellee's informal brief, dated September 14, 1990, still attributed this allegation to me by saying in the final sentence in paragraph 3, on page 4, namely:

> Finally, the (Tax) Court declined to declare Code Sections 280(A) and 274(d) unconstitutional, as requested by taxpayer.

3. The normal functions and procedure of the judiciary.

In my study and teaching of American National Government (including the Constitution of the United States) for many years and many times, I assume and believe the separation of powers means:

a. The legislative branch (or Congress) is to make laws.

b. The executive branch (the President or his subordinate agencies or official) is to apply the laws, and

c. The judiciary branch (the different levels of judges, federal and state) is to interpret the laws and declare their constitutionality, either on their own volition or when the laws are challenged by any litigant.

To be specific and in this case, I believe when I challenged the constitutionality of the IRS regulation of Rev. Proc. 83071 at .421 to set daily meals expenses at $14.00 per day for academic or business travel without substantiation, I believe it is up to the judiciary or the judge involved to declare whether the regulation is constitutional or not; if it is not, the IRS may apply Section 274(d) in the Code in this case, then I may challenge Section 274(d) to be unconstitutional again because it was, may I say, unfair, or unjust, or inappropriate that was why IRS was authorized to set up a new regulation in Rev. Proc. 83-71 at .421, mentioned above. I believe the notion that after IRS's regulation setting up $14.00 for business meals per day is declared unconstitutional, the only law left in this regard will be Section 274(d) in the Code, which will preclude me from claiming for the deduction of travel meals in its entirety, and which will stick (Please see the latter part in paragraph 2, on page 10 of the appellee's informal brief), but which is incorrect because the final decision on the constitutionality of any law, even a tax law, including Section 274(d) is not with the U. S,. Tax Court.

4. My argument on this point stated under "III.2." which is the five elements, a. b. c. d. & e. on pages 5-6 in my brief, dated April 2, 1990, to the Tax Court, plus the established principal in international law, "ex aequo et bono."

III. THE COMMENTS ON APPELLEE'S INFORMAL BRIEF

A. The General Comments

I choose only a few examples from the appellee's informal brief to show that the informal brief tends to be ambiguous, obscure, and vague, and, therefore, inaccurate. For example, the below are allegations or assentations made in the appellee's informal brief, dated September 14, 1990, and I try to point them out one by one.

1. "Finally, the [Tax] Court declined to declare Code Sections 280(A) and 274(d) unconstitutional, as requested by the taxpayer." (please see the last sentence in the second paragraph, on page 4 of that informal brief).

With regard to this allegation, I specifically and absolutely denied it and stated in my answer under "b." to the fourth question on page 5 in my informal brief, dated August 23, 1990, to the Court of Appeals that:

> b. The Tax Court mistook my request to it to declare that the regulation to allow taxpayer to deduct their business travel meals expenses for $14.00

per day for both out-of-state and in-state trips is too harsh, unrealistic, unreasonable, and, therefore, unconstitutional as a request to declare that Section 274(d) in the Code to be unconstitutional, which I never did, either in my brief, dated April 2, 1990, to the Tax Court, or in my oral arguments in the trial on April 3, 1990.[postponed to April 4, 1990 by the Tax Court].

2. "...As sole support for his position, taxpayer points to an IRS publication for the taxpayer that sets forth the general rule that depreciation deductions are allowable with respect to depreciable property used in a taxpayer's trade or business. This publication (what publication, -parentheses are mine), however, does not address the limitations imposed by Section 280(A) on the deduction of expenses relating to the taxpayer's use of a portion of his home for business purposes and certainly does not purport to allow deductions that Congress specifically has disallowed (Please see the latter part in the second paragraph on page 7 of that informal brief).

However, after rereading the above quotation and also reviewing the specific and definite positions I have taken in the three documents (a petition, dated October 10, 1989, a brief, dated April 2, 1990, to the Tax Court; and an informal brief, dated August 23, 1990, to the Court of Appeals, one would wonder what did the "sole" support, "an" IRS publication, "This" publication mean? Has the author of the appellee's informal brief read my positions on the deductions on the

professional library especially under "2.a. & b." on pages 2 and 3 in my informal brief, dated August 23, 1990, to the Court of Appeals?

Again, the appellee's informal brief continued to say:

> and certainly does not purport to allow deductions that Congress specifically has disallowed. (quoted above).

In this connection, I wonder if the author of the appellee's informal brief is familiar with Sections 7801(a), 7802(a), 7805(c) all of them are from the Internal Revenue Code of 1986 (as amended--The Code is enacted by the Congress), and also Section 301.7805-1(a)(b)(c) from the Regulations on Procedure and Administration, which, I believe, is promulgated by the Secretary of the Treasury, who derived his power, delegated to him by the Congress through Sections 7801(a), 7805(a)(c) in the Code, which is enacted by the Congress, which , I believe, exactly meet the requirement, "the source of authoritative federal tax law" as stated toward the end on page 7 and at the top of page 8 in the appellee's informal brief, namely:

> The sources of authoritative federal tax law are statutes (e.g., provisions of the Internal Revenue Code and treasury regulations promulgated thereunder...

3. "Not informal publications of the IRS" (on top of page 8)

I have not heard from the IRS staff, nor read from the Code, nor any other IRS publication that there are a differentiation between "formal" and "informal" IRS publications. Should there be so, are the yearly issued IRS publications 17, Your Federal Income Tax--- and 534, Depreciation (which, I believe, are made by the IRS with the approval of the Secretary of the Treasury), formal or informal IRS publications and I would like to be enlightened, by the appellees, preferably with the basis in the Code or any other IRS publication.

4. In the middle of the first paragraph on page 8, it is said, as stated by the Seventh Circuit, "Treasury Publications and pamphlets...do not bind the government. They are simply guides, and a taxpayer who relies on them generally does so at his own peril."

Without time to go into the decisions in this regard, I believe the decisions of the Seventh Circuit will not bind us in the fourth Circuit, besides how does the Seventh Circuit court reconcile its decisions with Sections 7801(a), 7805(a), 7805(c), quoted before. They are positive laws so far as I am concerned.

5. " That the Commissioner did not disallow similar home office deductions claimed by taxpayer is earlier years has no bearing on the propriety of the Commissioner's disallowance of the instant deductions" (in footnote 5, on page 8). This seems to be an assertion without any case

law to support it from the footnote and on the page. Does this smack the old saying that "the king can do no wrong," and also support my complaints that the allowance or disallowance of my claims by the IRS is arbitrary and capricious?

6. "At all events, it is well settled that the Commissioner's error in applying the law in one year does not preclude him from correcting the error in the later year." (in footnote 5, on page 8)

I believe this should have no bearing on my case because the Commissioner had approved my claims for deductions (or rents) of my library and the utilities used therein for eighteen years (1967-1984), even six years after I retired in 1978, without any teaching income (1979-1984), and the Commissioner approved my claims for the deductions on the expenses on the use of a car, miscellaneous expenses, and travel expenses for twenty years (1967-1986) (Please see the Stipulation of Facts, submitted to the Tax Court on April 3, 1990.) All of these had not been in one year.

B. The overriding comments

I believe it is disturbing to see or find out that both the decision of the Tax Court, entered May 9, 1990, and the appellee's informal brief, dated September 14, 1990, did not attack, criticize, or even discuss or comment on the core of my arguments in "the Restricting Paragraph," defined and discussed under "II. A." in this brief and the "delegation of

powers in Constitutional law," from which the core of my argument was derived. Both of which are my paramount arguments in this case discussed in "II. B. 3. a," in this brief, and also stated under I. and II. (pages 1-4) in my brief, dated April 2, 1990, to the Tax Court and I also stated this in answer "a." to question "1" and in answer "a." to question "4" in my informal brief, dated August 23, 1990, to the Court of Appeals.

IV. THE LEGAL AUTHORITIES CITED IN THIS SUPPLEMENTARY INFORMAL BRIEF

1. Internal Revenue Code. As of June 5, 1986. Volumes I and II. Chicago, Ill., Commerce Clearing House, Inc.
2. Excerpt from The Regulations on Procedure and Administration, sent to me by Ms. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, in reply to my inquiry of the Commissioner of Internal Revenue, dated July 23, 1990.
3. Sec. 706 of The Administrative Procedure Act. United Stated Code Service. Lawyers Edition. 5 USCS. Government Organization and Employees. Sections 554-900. Rochester, New York, 1989.

4. Internal Revenue Service Publication 17 (Rev. Nov. 84), Your Federal Income Tax, For individuals, for use in preparing 1984 Returns.
5. Internal Revenue Service Publication 17 (Rev. Nov. 85) - ditto -
6. Internal Revenue Service Publication 534 (Rev. Dec. 84) Depreciation, For use in preparing 1984 Returns
7. IRS Publication 534, Depreciation for 1985 - ditto -
8. IRS Publication 534, Depreciation for 1986 - ditto -
9. IRS Publication 534, Depreciation for 1987 - ditto -
10. IRS Publication 534, Depreciation for 1988 (with a change of one word)
11. IRS Publication 534, Depreciation for 1989 (with a change of one word)
12. Sec. 1.162-6 in the IRS Income Tax Regulation
13. IRS Rev. Proc. 83-71 at .421 gave effect to IRS rule or regulation to set standard daily meal allowance at $14.00 for travel requiring a stay of less than 30 days in one general locality where a taxpayer is pursuing a trade or business, and $9.00 for a stay of at least 30 days.

14. Standard Federal Tax Reporter (without specification, given to me by the Auditing Office of IRS office in Fayetteville) to record the above IRS regulation under item No. 13.

15. The Constitution of the United States of America-Analysis and Interpretation, prepared by the Legislative Reference Service, Library of Congress, 1964 Edition, published by the U.S. Printing Office, Washington, 1964.

16. Prentice Hall: Federal Tax Guide, 1989, First Edition, Vol. I.

17. Black Law's Dictionary, Fifth Edition, 1979, St. Paul, Minn.: West Publishing Company.

18. The Case Laws

    a. Major case laws cited in Prentice Hall: Federal Tax Guide, 1989, First Edition, Vol. I in Sections 15332,

        (1) Property is depreciable during intermittent periods when idle but ready for use. P Dougherty Co. v. Comm., 159 F2d 269, 35 AFTR 669 cert den.

        (2) Depreciation allowed on property held for income though no income was produced. Rev. Rul 55-579. 1955-2 CB 47

        (3) Allowance based on estimate. Cohen v. Cohen. 39F2d 540, 8 F AFTR 10552

b. Cases in which the Supreme Court of the United States had approved the delegation of power to the Internal Revenue Service - in Re Kollock, 165 U.S. 526 (1987)

c. Cases in which the Supreme Court of the U.S. had approved the delegation of power to the Secretary of the Treasury - in Buttfield v. Stranahan, 192 U.S. 470 (1904)

d. Cases in which the Supreme Court of the United States had approved the delegation of power to executive or administrative official of authority to make rules governing the affairs in their specific fields:

(1) United States v. Grimaud, 220 U.S. 506 (1911):

(2) U.S. v. Shreveport Grain & El. Co., 287 U.S. 77, 85 (1932):

(3) Currin v. Wallace, 306 U.S. 1 (1939)

(4) Avent v. United States, 266 U.S. 127 (1924):

(5) U.S. v. Rock Royal Co-op., 307 U.S. 533 (1939):

(6) Yakus v. United States, 321 U.S. 414 (1944):

(7) Bowles v. Willingham, 321 U.S. 503 U.S. 381, 397 (1940):

(8) Sunshine Coal Co. v. Adkins, 310 U.S. 381, 397 (1940):

(9) Hirabayashi v. United States, 320 U.S. 81,104 (1943):

(10) Fahey v. Mallonee, 332 U.S. 245 (1947):

(11) Mulford v. Smith, 307 U.S. 38 (1939):

(12) Int. Com. Comm. v. Goodrich Transit Co., 224 U.S. 194, 214 (1912):.

e. Cases in which the state laws declared to be unconstitutional by the Supreme Court of the United Stated because of their unreasonableness, such as:

(1) Smith v. Ames, 169 US 466 (1895).

(2) Chi B. & Q. Ry. v. Wisconsin R.R. Com., 237 US 220 (1915).

(3) Southwestern Tel. Co. v. Danuber, 238 US 482 (1915).

(4) Burns Baking Co. v. Bryan, 264 US 504 (1924).

(5) Michigan Commission v. Duke, 266 US 570 (1925).

(6) Weaver v. Palmer Bros. Co., 270 US 402 (1926).

(7) Manley v. Georgis, 279 US 1 (1929).

(8) Western & Alt. R. Co. v. Henderson, 279 US 639 (1929)

(9) Bibb v. Navajo Freight Lines, 359 US 520 (1959).

f. Cases in which the municipal ordinances declared to be unconstitutional by the United States Supreme Court because of their unreasonableness, such as:

(1) Postal Telegraph-Cable Co. v. Taylor, 192 US 64 (1904).

(2) South Covington Rd. v. Conington, 235 US 537 (1915).

V. THE REQUEST TO THE COURT OF APPEALS

In summary, I believe I have stated my case both in facts and in the law adequately, clearly, and succinctly and hope and pray that the Court of appeals would kindly review all the presentations submitted and render a judgement without a trial by:

1. vacating the decision of the Tax Court, entered May 9, 1990; and thereby,
2. setting aside the decisions of the IRS to disallow my claims for the depreciation deduction on my professional library and the utilities used therein;
3. restoring my claims for the travel meals expenses;
4. awarding me the legal expenses after the above three requests are decided by the court.

VI. APPENDIXES

(Appendixes mention under I are designated as A-1, A-2, A-3 etc., appendixes mentioned under II are designated as B-1, B-2, B-3 etc., and appendixes mentioned under III are designated as C-1, C-2, C-3 etc.)

A-1 My letter dated September 4, 1990 to the Tax Court.

A-2 Ms. Lynn L. Glasser's letter dated September 14, 1990 for the Tax Court to me.

A-3 My letter dated June 28, 1990 to the Tax Court.

A-4 Ms. Lynne L. Glasser's letter dated July 11, 1990 for the Tax Court to me.

A-5 My letter dated July 31, 1990, to the Tax Court through Ms. Lynne L. Glasser.

A-6 Ms. Lynne L. Glasser's letter dated August 14, 1990 for the Tax Court to me.

B-1 A copy with the provision of "Professional Library" on page 2 from the IRS publication Depreciation 1986.

B-2 A copy with the provision of "idle assets" is on the same copy as B-1

B-3 A copy of the IRS regulation Section 1.162-6

B-4 A copy with section 15322, on page 15019 from the Prentice-Hall: Federal Tax Guide, 1989 First Edition.

B-5 A copy with Section 16335 on page 15021 from Ibid.

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B-6 A copy of page 115 from the IRS publication 534, 1985.

B-7 A copy of Section 7801(a) from the Code.

B-8 A copy of Section 7802 (a) from the Code.

B-9 A copy of Section 7805 (a) from the Code.

B-10 A copy of Section 301.7805-1 rules and regulations from the Regulations on Procedure and Administration, Promulgated by the Secretary of the Treasury.

Respectfully

Submitted

DATE: October 19, 1990

Min-chuan Ku
Appellant
Address: 340 Loch Stone Court
Fayetteville, NC
28303
Telephone: (919) 867-3355

Appendix E-9

This certifies that a copy of this supplementary informal brief with appendixes is sent to the counsel listed below by the first class mail with postage prepaid on October 19, 1990

Abraham N.M. Shashy, Jr., Esq.
Chief Counsel, Internal Revenue Service
111 Constitution Ave., N.W.
Washington, D.C. 20224

Garry R. Allen, Esq.
Chief, Appellate Section
Tax Division
Department of Justice
P.O. Box 502
Washington, D.C. 20044
Lead Counsel for the appellee

Note: The above copy is made from my supplementary informal brief dated October 19, 1990 with a few changes to eliminate a few typographical errors.

Appendix E-9

Appendix A-2 Please see the note at the bottom of this page.

UNITED STATES TAX COURT

Washington, DC 20217

September 14, 1990

Min-Chuan Ku
340 Loch Stone Court
Fayetteville, North Carolina 28303

In Re: Min-Chuan Ku
Docket No. 25028-89

Dear Mr. Ku:

Your letter received on September 7, 1990, was referred to me for response. Your record in the Court of Appeals will include all documents filed in the Tax Court, the transcripts, and any documents received into evidence at the trial of your case. It is unclear from your letter if that is what you are requesting. This Court will also forward to the Court of Appeals, the briefs as you request.

The petition on the Tax Court docket record is the petition you originally sent to the Court commencing this case.

Very truly yours,

Lynne L. Glasser
Deputy Clerk of the Court

LLG/cam

NOTE: This was inadvertently missing in some copies of my supplementary informal brief dated October 19, 1990 to the United States Court of Appeals in that I missent Ms. Lynne L. Glasser's letter dated August 14, 1990, for her letter, dated September 14, 1990, as Appendix A-2, in the supplementary informal brief, because of the pressing of the deadline and added here for the correct replacement, in case the Honorable Justices checked my Appendix A-2 to the copies of my original supplementary informal brief dated October 19, 1990, submitted to the Supreme Court by the Court of Appeals

E-10 A copy of my petition (omitting all the appendixes), dated February 11, 1991, to the United States Court of Appeals for the Fourth Circuit for a rehearing of this case.

The United States Court of Appeals for the Fourth Circuit

Min-chuan Ku	)	
	)	
v.	)	No. 90-2148
	)	
Commissioner of Internal Revenue	)	

Petition by the Appellant for a Rehearing of This Case

This petition is prepared according to the "Purpose" in the "notice of Judgment," attached to the "Judgment," dated January 31, 1991, from the United States Court of Appeals for the Fourth Circuit.

I Introduction I believe the substantive laws (Sections 7801(a), 7802(a), 7805(a) and (c) in The Internal Revenue Code of 1986 (as amended), which, I believe, were passed and amended by the Congress, and the procedural law in Section 301.7801-1, "Rules and Regulations," in the Regulations on Procedure and Administration, which, I believe, was promulgated by the Secretary of the Treasury in the exercise of his authority provided in Sections 7801(a) and 7805(a) and (c), in The Code, stated above; and the procedural law, namely Section 706 of The Administrative Procedure Act, which have been cited and/or quoted in my informal brief, dated August 23, 1990, and/or in my

supplementary informal brief, dated October 19, 1990, to the Court of Appeals; but which might have been overlooked by the Court of Appeals because in a part of its judgment, dated January 31, 1991, the Court of Appeals said:

> Accordingly, we affirm on the reasoning of the tax court, Min-chuan Ku v. Commissioner, tax court No. 25028-89 (May 9, 1990).

But the substantive laws and the procedural law, stated above, had not been presented to the United States Tax Court both orally (in the trial on April 4, 1990) and in writing (my petition, dated October 10, 1989, and my brief, dated April 2, 1990) to the Tax Court. Therefore, the Tax Court was in no way to take my presentations, which I presented to the Court of Appeals both in my informal brief, dated August 23, 1990, and in my supplementary informal brief, dated October 19, 1990, into consideration in the reasoning in its judgment, entered May 9, 1990. I did not present them to the Tax Court because I thought that to cite some related and pertinent paragraph, section, or provisions with instructions therein from the official Internal Revenue Service instruction documents or publications for taxpayers to prepare their income tax returns is good enough for me to defend my case in the trial; but I was caught by surprise that Judge Carleton D. Powell, Special Trial Judge, at the Tax Court, completely ignored, disregarded, and flatly rejected my plea on

the provision in a paragraph, which I would call a "Restricting Paragraph" (defined under the heading number II. A. in my supplementary informal brief and quoted and discussed under "Statement" below), out of hand by waving a book (which I later found was the Internal Revenue Code of 1986 (ad amended) and shouted to me:

> This is not -- Mr. Ku, whatever the publications say are not the law. This is the law. This is what I am bound by.

The statement, quoted above, would seem to be the center of his reasoning in his judgment. The above is quoted from page 18 in the Official Transcript, prepared by On the Record Reporting, Inc., which I was given to understand was contracted by the Tax Court to prepare the Official Transcript.

After being rebutted by the Trial Judge that whatever the IRS publications say are not the law, the book, Internal Revenue Code of 1986 (as amended) is. He is bound by this book only. I did a thorough study and research, among which was to write a letter, dated July 23, 1990, to the Honorable Fred T. Goldberg, Jr., the Commissioner of Internal Revenue and the appellee in this case, to specifically inquire of him about the legal basis upon which the IRS publishes or issues these publications and the legal effects of these publications or the provisions

therein, in pursuance of The Freedom of Information Act of July 4, 1963, as amended on November 21, 1974, and Paragraphs 2 and 3 of my letter stated as follows:

Paragraph 2 says:

> I recall that Article I of the Constitution of the United States specifies, "All legislative powers herein granted shall be vested in a Congress of the United States...." but in practice, Congress did and has been delegating powers to executive and administrative officials of authority to make rules governing the affairs in their respective field, for example, in the case United States v. Grimaud, 220 U.S. 506 (1911).

Paragraph 3 says:

> I have noticed that from paragraph 2296.13 'meals and lodging "away from home,"' on page 27,572 in Revenue Procedure, it is said:
>
> In addition to imposing substantiation standards, Code Section 274(d) also allows the IRS to draft regulations that establish specific amounts that may be claimed as travel expenses deduction without substantiation. Under Reg. 1.274-5(h), IRS exercised its authority and created an option method of computing travel-related meals expenses that allows a taxpayer to elect a set amount for meals without having to provide detailed records providing actual cost. This regulation was given effect by Rev. Proc. 83071 at .421 below....
>
> But on other occasions or in other publications, your Service did not mention this kind of authority. May I assume that your Service has been under the general and indirect authority with delegated power from the Congress to the Secretary of the Treasury and through the Secretary to your Service to publish the publications yearly, such as: (1) (yearly) Instructions for Preparing Form 1040; (2), Depreciation (for Use in Preparing (yearly) Returns); .... I assume and believe that

all these publications, as mentioned above, have the same legal effects as the provisions in the Code, or in certain cases to implement the general rules and principles in the income tax laws or the provisions in the Code of 1986, as amended. Do these Instructions and publications, as mentioned above, have the same legal effects as the provisions in the Code, or in certain cases to implement, supplement, or replace the provisions in the Code, as an average taxpayer may not have the time or may not be able to read and digest the provisions in the Code, especially when they are frequently amended, changed, or revised?

II. Statement This petition is divided into two parts, namely: substantively (based on the substantive laws, rules, and regulations) and procedurally (based on the procedural law), both of which will be quoted and discussed below:

A. Substantively: The IRS based on Section 280A(c)(5) in the Internal Revenue Code of 1986 (as amended), to disallow my claims for depreciation deduction on my office in my home (or actually my professional library in my home) and the utilities used therein, while I based on a paragraph, which I would call a "Restricting Paragraph," because I believe it is from the IRS Publication 17 (Rev. Nov. '84), Your Federal Income Tax For Individuals For Use in Preparing 1984 Returns (appeared in paragraph 4, column 1, on page 116) to restrict the application of Section 280A(c)(5).

Below are Section 280A(c)(5), quoted from the Internal Revenue Code of 1986 (as amended), and the "Restricting Paragraph," quoted

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from the IRS publication 17, Your Federal Income Tax For Individuals For Use in Preparing 1984 Returns.

1. Section 280A(c)(5)

> (5) Limitation on deductions - In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph 3 where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deduction allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of -
>
> (A) the gross income derived from such use for the taxable year over.
>
> (B) the deductions allowable to such use which are allowable under this chapter for the taxable year whether or not such unit (portion thereof) was so used.

2. The "Restricting Paragraph," mentioned above, is quoted below.

> CERTAIN PROPERTY PLACED IN SERVICE OR LEASED AFTER JUNE 18, 1984 - There are limits on the depreciation (or rent) deductions you may claim on passenger automobiles, other transportation vehicles, home computers, and certain other property placed in service or leased after June 18, 1984. These limits apply if the property is not used predominantly (more than 50%) in a qualified business used during any tax year.... (Underlining is mine).

I believe this paragraph supports my claims twofold: Firstly, my office in home (or actually professional library in home) has been placed

in service beginning on May 1, 1984, and not after June 18, 1984; and secondly my professional library is used predominantly (more than 50%) in a qualified business) and not not used predominantly in a qualified business in any taxable year. Therefore, the limitation on deductions in Section 280A(c) (5) (A) (b) should not be applied to my claims for the depreciation deductions on my professional library and the utilities used therein for my income tax returns of 1985 and 1986 and thereafter.

Later, I have received a printed letter, dated August 21, 1990, from a Ms. Ruth L. Hill, Chief, Information and Campaign Development Branch, Internal Revenue Service, apparently in reply to me for my inquiry of the Commissioner of Internal Revenue, paragraph 1 of which says,

> Thank you for your recent inquiry. The items checked below apply to your situation.

And the checked item below says,

> The current tax law enacted by Congress is contained in the Internal Revenue Code of 1986 (as amended). We are enclosing excerpts from the Code and from Procedural regulations for your information.

Below are excerpts from the Code, a copy of each of them was sent to me by Ms. Ruth L. Hill, mentioned above.

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Excerpts from The Internal Revenue Code of 1986 (as amended)
Chapter 80 - General Rule
Subchapter A - Application of Internal Revenue Laws

Sec. 7801. Authority of the Department of the Treasury

[Sec. 7801(a)]

(a) Powers and Duties of Secretary - Except as otherwise expressed by law, the administration and enforcement of this title shall be performed by or under the supervision of the secretary of the Treasury.

Sec. 7802 Commissioner of Internal Revenue
[Sec. 7802(a)]

(a) Commissioner of Internal Revenue - Except as otherwise expressed by law, the administration and enforcement of this title shall be performed by or under the Sec. 7802 Commissioner of Internal Revenue.

Sec. 7805 Rules and Regulations
[Sec. 7805(a)]

(a) Authorization - Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of alteration of law in relation to internal revenue (Underlining is mine).

[Sec. 7805(b)] - omitted

[Sec. 7805(c)]

(c) Preparation and Distribution of Regulations, Forms, Stamps, and Other Matters - the Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue. (Underlining is mine).

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Excerpts from the The Regulations on Procedure and Administration (promulgated by the Secretary of the Treasury).

General Rules
Application of Internal Revenue Law

Sec. 301.7805-1 Rules and Regulations

> (a) Issuance. The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer of employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue (Underlining is mine).
>
> (b) Retroactive. The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall apply without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect. (emphasis added)
>
> (c) Preparation and distribution of regulations, forms, stamps, and other matters - The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps and other matters pertaining to assessment and collection of internal revenue (Underlining is mine).

Therefore, under Section 301.7805-1 "Rules and Regulations" (c) "Preparation and distribution...." from the regulation on procedure and administration quoted above, the commissioner, with the approval of the

Secretary, does have the power to prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to assessment and collection of internal revenue, and under Section 301.7805-1(a), "Issuance," also quoted above, the Commissioner, with the approval of the Secretary, does (or shall) have the power to prescribe all needful rules and regulations (which, I believe, would include the yearly important IRS publication 17, Your Federal Income Tax... and another important IRS publication 534, Depreciation) for the enforcement of the code... including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (Underlining is mine).

From the above, it is clear that her printed reply, dated August 21, 1990, was supposedly written for the Commissioner to answer my specific inquiries of him, but Ms. Hill did not do so. She only sent me the excerpts from the Internal Revenue Code of 1986 (as amended) and also those from the Regulations on Procedure and Administration and underlined the important sections with a red ball-point pen. By so doing, I believe she implied that her answers were implied in these sections with her underlines. I have learned that the red underlines could not be copied by the copier machine in Fayetteville. And I underlined the sections on the above copies made by me with the Fayetteville copier machine as she did on her copies made elsewhere. [All the excerpts sent

to me by Ms. Hill were appended to my supplementary informal brief, dated October 19, 1990 as Appendixes B-7 to B-10.]

From the red underlinings on the above copies, I believe one may draw his or her conclusion as to what her or the commissioner's answers to my specific questions to the Commissioner in my letter, dated July 23,, 1990, would be. But my belief was that Section 7805(a) "Authorization-" from the Code, and Section 301.7805-1(a) "Issuance -" from the Regulations on Procedure and Administration should cover what I wanted to know in my inquiries of the Commissioner, stated above, because under Sec. 7805(a) "Authorizations-" quoted above, the Secretary of the Treasury does have the power to prescribe rules and regulations for the enforcement of this title, including all rules as may be necessary by reason of any alteration of law in relation to internal revenue, and under Sec. 301.7805-1(a) "Issuance-" which is also quoted above, the commissioner, with the approval of the Secretary, does have the power to prescribe all needful rules and regulations for the enforcement of the Code...., including all rules and regulations as may be necessary by reason of an alteration of law in relation to internal revenue (Underlining is mine).

Coming back to the "restricting paragraph," published in the IRS publications and in my research, I have found that the same "restricting paragraph" has appeared in other important IRS publications too. Below

is a list of the IRS Publications which contain this paragraph and which I have on my desk in my study room:

1. 1984 IRS Publication 17 (Rev. Dec. 84) Your Federal Income Tax, For Individuals, For Use in Preparing 1984 Return (appeared in Paragraph 4, column 1, on page 116).
2. 1985 IRS Publication 17 (Rev. Nov. 85) Your Federal Income Tax, For Individuals, For Use in Preparing 1985 Return (appeared in paragraph 4, column 1, on page 115).

(The dots denote that the same paragraph may have appeared in similar IRS publications for other years, about which I did not have time to consult or check).

3. 1984 IRS Publication 534 (Rev. Dec. 84) Depreciation (appeared in paragraph 5, column 3, on page 1).
4. 1985 IRS Publication 534 (Rev. Dec. 85) Depreciation (appeared in paragraph 7, column 3, on page 1).
5. 1986 IRS Publication 534 (Rev. Dec. 86) Depreciation (appeared in paragraph 8, column 3, page 1).

6. 1987 IRS Publication 534 (Rev. Dec. 87) Depreciation (appeared in paragraph 4, column 1, on page 2).
7. 1988 IRS Publication 534 (Rev. Nov. 88) Depreciation (appeared in paragraph 8, column 1, on page 3).
8. 1989 IRS Publication 534 (.....) Depreciation (appeared in paragraph 5, column 3, on page 3) - only to change one word, from "Certain" property to "Listed" property both in this and the IRS Publication, Depreciation, 1988.

From the above, it would seem that the same "restricting paragraph" or provisions in this paragraph appeared, year after year and revisions after revisions, in the most important IRS instruction documents or publications, such as the IRS publication #17, Your Federal Income Tax For Individuals For Use in Preparing (the yearly) Returns and that of the IRS Publication #534, Depreciation For Use in Preparing (the yearly) Returns....all of which, I assume and believe, were or had been approved by the Secretary of the Treasury, and would constitute a firm and established policy of the Government on this point, namely: to restrict the application of Section 280A(c) (5) in the Internal Revenue Code of 1986 (as amended).

Then a dispute arose in the trial in the Tax Court on April 4, 1990, when Judge Carleton D. Powell, Special Trial Judge, in the trial

waved a book, (which, I later found, was the Internal Revenue Code of 1986 (as amended) and shouted to me:

> "This is not--Mr. Ku, whatever the publications say are not the law. This is the law. This is what I am bound by." Stated above.

Here will the Court permit me to say that this "restricting paragraph" is not a simple sentence or a simple point, which was casually, occasionally, or carelessly put by an IRS staff in an ordinary document for one or a few years, but it has appeared in the most important IRS Documents, such as: (1) Your Federal Income Tax For Individuals For Use in Preparing (yearly) Returns and (2) Depreciation For Use in Preparing (yearly) Returns, year after year, and revisions after revisions. I believe this is an important policy statement, which should be covered by Sec. 7805-1(a) Authorization - except where such authority given by this title to any person other than an officer or employee of the Treasury Department. The Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue," in the Code, (emphasis added) and Sec. 301.7805(a) Issuance from the Regulations on Procedure and Administration, promulgated by the Secretary of the Treasury, and all of these rules stated before.

Therefore, may I say that the "restricting paragraph," quoted and discussed above, is the rule or regulation set up by the Commissioner with the approval of the Secretary of the Treasury under the power given to the Secretary of the Treasury in Section 7805(a) "Authorization" in the Code, and also under the power given to the Commissioner in Section 301.7805-1(a) "Issuance" in the Regulations on Procedure and Administration, both of which were quoted and discussed before.

And Section 301.7805-1(a) "Issuance" in the Regulations on Procedure and Administration is requoted below again because of its extra importance:

> (a) Issuance....The Commissioner, with the approval of the Secretary shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. (emphasis added).

Or I should say that Section 301.7805-1(a), especially the last expression in (a) namely: "including all rules and regulations as may be necessary by reason of any alteration of laws in relation to internal revenue" should apply to this case.

And, as such, this "restricting paragraph" should take precedence of Section 280A(c) (5) in the Code in applying to this case through the operation of "delegation of power in constitutional law," which had been

thoroughly discussed under II.B.3, in my supplementary informal brief, dated October 19, 1990, to the Court of Appeals, and which I request not to be repeated here because of the restriction of the time for filing, and also the restriction of the number of pages of this petition.

Finally, I believe this case is really a case, or a dispute, between taxpayer and the Commissioner of Internal Revenue on the interpretation of the legal effect of a paragraph (the "restricting paragraph" defined and discussed before), then I wonder how could the Commissioner try to deny or not to acknowledge, or honor the legal effect of this paragraph, which I also believe has been set up by the Commissioner through the power delegated to him generally and indirectly (through the Secretary of the Treasury) by the Congress - the whole matter has been discussed, I believe, thoroughly under II.B.3. in my supplementary informal brief, dated October 19, 1990, to the Court of Appeals (permit me not to repeat it here), especially Section 7805(a) "Authorization" in the Code and Section 301.7805-1(a) "Issuance" in the Regulations on Procedure and Administration. Had the Commissioner acknowledged and honored the legal effect of the rules and regulations contained in this paragraph (the "restricting paragraph," mentioned before), then the case would not have gone to the United States Tax Court and also the higher-ups thereafter, but when the Commissioner denied, or did not acknowledge or honor the legal effect of the rules and regulations contained in this paragraph, then

how could the Commissioner inspire or maintain the belief and confidence of the millions of taxpayers in the millions of copies of the IRS documents and publications directly, and also in the Internal Revenue Service, a major important agency of the Federal Government, indirectly?

B. Procedurally: I believe the acts of allowance and disallowance by IRS of my claims for the deduction on my office in home (or actually my professional library in home) and the utilities used therein have been arbitrary and capricious determined by the reasons stated below:

1. I recall during the 18 years (1967-1984) my claims for the deduction of my professional library (or the rents of it) and the utilities used therein were all approved or allowed by the IRS without any inquiry, interruption, or disallowance.

2. Argument may be advanced that during those years I received more income (derived from teaching and/or research) than the claims for the deductions, but during the six years (1979-1981, as listed in the table below through my casual research, and from which, it is clear that my claims for deduction for my professional library (or the rents of it) and the utilities used therein were not covered or actually in excess of the royalties, the only research income, I received in each of these years; or I did not meet the requirements, stated in Section 280A(c)

(5) (A)(B). But my claims for the deductions in these years were all allowed... so also were my claims for the deductions for the years 1982-1984 (during those years I did not receive any income, from teaching or royalties), but my claims for the deductions were all allowed, while my similar claims for the deductions for 1985 and 1986 (the years returns are in question in this case) were disallowed because I did not meet the requirements in Section 280A(c) (5). But I could not see any reason for this disapproval.

Below is the Table to show my academic income (teaching or royalties) received and my claims for the deduction on my professional library and the utilities used therein allowed and disallowed by the IRS for the years 1979-1986, after my retirement in 1978.

Year	Royalty Received	Business (academic & research connected expenses) reported and approved by the IRS
1979	2299.56	6035.68
1980	1832.16	7211.22
1981	1839.83	8603.59
1982	"0"	8163.31
1983	"0"	8455.13
1984	"0"	11030.24
1985	"0"	9337.56 = 1182.00 of which was disallowed.

1986 "0" 7564.74 = 879.00 of which was disallowed.

The above mentioned royalties and business connected expenses were from my income tax returns, 1979-1986, and the figures of disallowances were from the IRS Notice of Deficiency, dated July 21, 1989. The royalties are made in a casual survey from my income tax returns and they are subject to the IRS checking.

3. Argument may also be made that IRS did not call me in, to audit my income tax returns for these years, and the auditing Office of IRS might not audit my returns for these years carefully and vigorously, which is not true; but, on the contrary, I believe the IRS Auditing Office audited my income tax returns through correspondence carefully, thoroughly, meticulously, and even overzealously. I have all the correspondence with IRS on their auditing or examining of my income tax returns for at least three years, 1982-1984 (the immediate three years before 1985 and 1986, the years' returns are in question in this case), ready to be submitted to the Court of Appeals for review and consideration if required.

4. According to Regulations 1.162-6 Professional Expenses in the Income Tax Regulations, which says:

Regulations.

> 1.162-6 Professional expenses. - A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid or accrued in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, the rent paid or accrued for office rooms, the cost of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amounts currently paid or accrued for books, furniture, and professional instruments and equipment, the useful life of which is short, may be deducted (Underlining is mine).

From the above, we can see that the car expenses, travel expenses, and other professional expenses are listed on the same footing with the deductions on professional library and the utilities used therein (or in the regulation stated above, namely "the rent paid or accrued for office rooms, the cost of fuel, light, water, telephone, etc."). Then why did IRS allow my claims for car expenses, travel expenses, and other miscellaneous expenses as listed under Point 10 in the Stipulation of Facts, in this case but not the professional library and the utilities used therein, as reported to and disputed with IRS in my income tax returns of 1985 and 1986? But both of them were allowed and listed on the same footing in regulations 1.162-6 stated above. And point 10 in the Stipulation of Facts is stated below, (Point 10 in the Stipulation of Facts, which was signed by Mr. Frank D. Armstrong, Jr., senior Attorney for IRS on March 20, 1990, and by me on March 15, 1990, is as follows:)

10. For 1985 and 1986, respondent [or Appellee] did allow the petitioner [or Appellant] claims for car expenses, miscellaneous expenses, and travel expenses (Schedule C expenses) in the Statutory notice of deficiency as listed below:

	1985	1986
Car Expenses	$1975.44	$1256.80
Misc. Expenses	789.35	783.80
Travel Expenses	616.13	588.87
Total	$3380.92	$2629.47

Then a question must be asked: why IRS allowed my claims for the deductions of some items but not on others, although all of them are listed in the same regulation, namely: Regulation 1.162-6, quoted above, and which were claimed by the same appellant for the same years of returns, namely 1985 and 1986?

5. The application of Section 706 of the Administrative Procedure Act.

Therefore, I believe from the four points stated above, which adequately indicated, illustrated, and approved that the acts of disallowance of my claims in my income tax returns for 1985 and 1986 by IRS were arbitrary and capricious and, therefore, I hope and pray that Section 706 of the Administrative Procedure Act be applied by the Court of Appeals.

In addition, with regard to another problem in dispute in this case, namely: when I claimed $25.00 for out-of-state business travel meals expense per day and $17.50 for in-state business travel meals expenses per day for only a few days in each trip and only a few trips in

each year, in my 1985 and 1986 returns, but IRS reduced them to $14.00 per day for both out-of-state and in-state business travel meals expenses according to the rule or regulation, which was given effect by Revenue Procedure 83-71 at .421. This rule set up by IRS to allow $14.00 for both out-of-state and in-state business travel expenses in this time and age is too harsh, unrealistic, unreasonable, and, therefore, unconstitutional.

Wherefore, for the above stated reasons, it is respectfully requested that the Court rehear this case.

Respectfully submitted,

Date: February 11, 1991

Min-chuan Ku, Appellant
Name
Address: 340 Loch Stone Court
Fayetteville, N.C. 28303

Telephone: (919) 867-3355

P.S. I recall and believe that I have sent all, or almost all, copies of, or on, the information or provisions from IRS documents or publications, income tax laws, rules and regulations, and provisions concerning this case from books such as: (1) The Constitution of the United States of America - Analysis and Interpretation (Annotation of Cases, Decided by the Supreme Court of the United States to June 22, 1964, and (2) Prentice Hall: Federal Tax Guide, 1989, First Edition, and materials from other sources, cited or quoted in my appeals to the Court

of Appeals, in my petition, dated October 10, 1989, and my brief, dated April 2, 1990, to the Tax Court and my informal brief, dated August 23, 1990, and my supplementary informal brief, dated October 19, 1990, to the Court of Appeals, which will not be attached here to this petition because of the "time" and the "number of pages" restricted by the "Notice of Judgment" attached to the judgment of the Court of Appeals, dated January 31, 1991. However, I will submit or resubmit all copies of the information or provisions from any sources cited or quoted in this petition to the Court of Appeals upon its order(s) as soon as possible.

This certifies that a copy of this petition is sent to the counsel listed below by first class mail with postage prepaid on February 11, 1991.

Abraham N. M. Shashy, Jr., Esq.

Chief Counsel, Internal Revenue Service

1111 Constitution Ave., N.W.

Washington, D.C. 20224

Appendix F-1

F-1 A copy of the remarks from Judge Carleton D. Powell is made from the official transcript of the trial of this case, scheduled on April 3, 1990, but postponed to April 4, 1990 by the Tax Court, transcribed by On the Record Reporting, Inc., contracted by the Tax Court to do the transcribing, on p. 18 with emphasis added. (Below are the quotations continued from the previous page in the transcript).

DIRECT TESTIMONY

THE WITNESS: Yes. I should mention that the paragraph in the IRS publication, Depreciation --

THE COURT: That is not -- Mr. Ku, whatever the publications say are not the law. This is the law. This is what I am bound by. (emphasis added)

MR. KU: As a taxpayer, I would take the IRS's publication as the law, and also --

THE COURT: I know. But there are many cases that do not say that that is the law.

ON THE RECORD REPORTING
(512) 450-0342

Appendix F-2

F-2 A copy of the paragraph, "Functions Which May be Delegated" is made from the book, The Constitution of the United States of America - Analysis and Interpretation (Annotation of Cases decided by the Supreme Court of the United States to June 22, 1964. Prepared by the Legislative Reference Services, Library of Congress...1964 Edition, p. 96.

Functions Which May Be Delegated

Power to supplement statutory provisions– Yielding to "common sense and the inherent necessities of governmental co-ordination" the Court has sustained numerous statutes granting in the total vast powers to administrative or executive agencies.[1] Two different theories, both enunciated during the Chief Justiceship of John Marshall, have been utilized to justify these results. First in importance is the theory that another department may be empowered to "fill up the details" of a statute.[2] The second is that Congress may legislate contingently, leaving to others the task of ascertaining the facts which bring its declared policy into operation.[3]

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[1] The Constitution of the United States of America - Analysis and Interpretation....prepared by the Legislative Reference Services, Library of Congress...1964 Edition. p. 96.

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[2] Wayman v. Southard, 10 Wheat. 1 (1825).

[3] The Brig Aurorn, 7 Cr. 382 (1813).
(Note): Footnotes 2 and 3 in my petition and on this page were Footnotes 22 and 23 in ibid, p. 98. A copy of footnotes 2 and 3 is attached as F-2 on this page .

Appendix F-3

F-3 A copy of footnote 4 in my petition referred to footnotes 35 through 48 in ibid, pp. 98-99.

> *Rule-making power*– After Wayman v. Southard, nearly three quarters of a century elapsed before the Court had occasion to approve the delegation to an executive officer of power to issue regulations for the administration of a statute. In 1987 it sustained the authority granted to the Commissioner of Internal Revenue to designate the "marks, brands and stamps" to be affixed to packages of oleomargarine.(35) Soon thereafter it upheld an act which directed the Secretary of the Treasury to promulgate minimum standards of quality and purity for tea imported into the United States.(36) It has approved the delegation to executive or administrative officials of authority to make rules governing the use of forest reservations;(37) permitting reasonable variations and tolerances in the marking of food packages to disclose their contents;(38) designating tobacco markets at which grading of tobacco would be compulsory;(39) establishing priorities for the transportation of freight during a period of emergency;(40) prescribing price schedules for the (continued on the next footnote or page 99 in ibid.)

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(35) In re Kollock, 165 U.S. 526 (1898).

(36) Buttfield v. Stranahan, 192 U.S. 470 (1904).

(37) United States v. Grimaud, 220 U.S. 506 (1911).

(38) U.S. v. Shreveport Grain & El. Co., 287 U.S. 77, 85 (1932).

(39) Currin v. Wallace, 306 U.S. 1 (1939).

(40) Avent v. United States, 266 U.S. 127 (1924).

(continued from footnote[40] distribution of milk;[41] or for all commodities[42] and for rental housing[43] in time of war; regulating wages and prices in the production and distribution of coal;[44] imposing a curfew to protect military resources in designated areas from espionage and sabotage;[45] providing for the appointment of receivers or conservators for Federal Savings and Loan Associations;[46] alloting marketing quotas for tobacco;[47] and prescribing methods of accounting for carriers in interstate commerce.[48] [4]

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[41] U.S. v. Rock Royal Co-op, 307 U.S. 533 (1939).

[42] Yakus v. United States, 321, U.S. 414 (1944).

[43] Bowles v. Willingham, 321 U.S. 503 (1944).

[44] Sunshine Coal Co. v. Adkins, 310 U.S. 381, 397 *1940).

[45] Hirabayashi v. United States, 320 U.S. 81, 104 (1943); Korematau v. United States, 323 U.S. 214 (1944).

[46] Fahey v. Mallonee, 332 U.S. 245 (1947).

[47] Mulford v. Smith, 307 U.S. 38 (1939).

[48] Int. Com. Comm. v. Goodrich Transit Co., 224 U.S. 194, 214 (1912).

[4] ibid. pp. 98-99 (footnote 4 in my petition referred to footnotes 35 through 48 in ibid.), a copy of footnote 4 in this petition is attached as F-3 on pp. 145-146 in this petition.

Appendix F-4

F-4 A copy of Point 9, made from The Stipulation of Facts, p. 4.

> 9. For the years 1967 through 1984, respondent did not disallow any of the petitioner's claims for deductions on rents, and for the year 1984, respondent did not disallow petitioner's claim for deduction on rent and depreciation deduction on his office in home (actually professional library), and for the year 1967 through 1984, respondent did not disallow petitioner's claims for utilities used therein. However, the respondent also did not call the petitioner in to audit his income tax returns for these years.

Appendix F-5

F-5 A copy of point 10, made from The Stipulation of Facts, p.5.

10. For 1985 and 1986, respondent did allow the petitioner's claims for car expenses, miscellaneous expenses, and travel expenses (Schedule C expenses) in the statutory notice of deficiency as listed below:

	1985	1986
Car Expense	$1,975.44	$1,256.80
Miscellaneous Expense	789.35	783.25
Travel Expense	616.13	588.87
	$3,380.92	$2,628.92

Signed
MIN-CHUAN KU
Petitioner
340 Loch Stone Court
Fayetteville, NC 28303
Tel. No. 919-867-3355

March 15, 1990

Signed
ABRAHAM N. M. SHASHY, JR.
Chief Counsel
Internal Revenue Service

Signed
by: FRANK D. ARMSTRONG, JR.
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March 20, 1990

F-6 A copy of the pertinent part of Section 706 in The Administrative Procedure Act is made from United States Code Annotated, Title 5, Government Organization and Employees, Section 704-5100, St. Paul: West Publishing Co., P. 54.

§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall–

(1) ...

(2) hold unlawful and set aside agency action, findings, and conclusions found to be–

(A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;